

THE SOCIAL CONSTRUCTION OF JUSTICE:
SEARCHING FOR CONNECTION AND
CREDIBILITY IN SRI LANKA

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Abstract

Research in Sri Lanka suggests that many people experience a deep scepticism about the chances of achieving justice. This is true not only of those who had suffered the most gross forms of human rights violations in the country's past conflicts but, surprisingly, also of those caught up in more ordinary forms of everyday disputes and grievances. The prevalence of this sentiment of pervasive 'injustice' – captured in one informant's pithy statement that "only the powerful get justice in Sri Lanka" – compels closer scrutiny of the broader processes and politics of justice-seeking. This thesis, based on research carried out in 2008 and 2009 and on the analysis of detailed accounts from 110 informants in 3 geographical locations, studies this quotidian experience of justice-seeking and dispute settlement work in Sri Lanka. It provides insights into how the broader political and social environment shapes the possibilities of a just outcome for any of its citizens.

The thesis reveals the overriding power of social and political factors in the justice-seeking process. Becoming 'known' in a way that establishes the credibility of disputants is important. This is an inherently social exercise in which dominant notions about credibility and legitimacy as defined by the state are reinforced. The thesis illustrates the crucial role of the state in everyday dispute management. The police are a key resource for mediators and disputants, who seem to rely most notably on the police's acknowledged potential and actual capability for violence. Persons who are seen to be politically suspicious are especially vulnerable to such violence. Who constitutes a 'suspicious' person, however, is in flux. The thesis shows that attempts which focus narrowly on law reform and human rights advocacy will be in vain unless the social and political processes driving the implementation of justice are acknowledged and addressed.

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List of Acronyms

ACMC	All Ceylon Muslim Congress
ADB	Asian Development Bank
AHRC	Asian Human Rights Commission
CIC	Ceylon Indian Congress
CID	Criminal Investigation Department
CTF	Community Trust Fund
CWC	Ceylon Workers' Congress
DCS	Department for Census and Statistics
ER	Emergency Regulations
GA	Government Agent
GN	Grama Seva Niladhari
GS	Grama Sevaka
ICG	International Crisis Group
IGP	Inspector General of Police
KCDF	Kundasala Community Development Fund
JVP	Janata Vimukthi Peramuna
LRC	Land Reforms Commission
LTTE	Liberation Tigers of Tamil Eelam
MP	Member of Parliament
NGO	Non-Governmental Organisation
NPC	National Police Commission

OIC	Officer-In-Charge
PA	People's Alliance
PADHI	Psychosocial Assessment of Development and Humanitarian Interventions
PDHS	Provincial Department of Health Services
PTA	Prevention against Terrorism Act
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
TAF	The Asia Foundation
TISL	Transparency International Sri Lanka
TNA	Tamil National Alliance
TULF	Tamil United Liberation Front
UK	United Kingdom
UNDP	United Nation Development Programme
UNP	United National Party
UPFA	United People's Freedom Alliance

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Chapter 1 Introduction

In March of 2003 during the then ongoing peace process in Sri Lanka, I was invited to a workshop to participate in a panel on the topic of reconciliation and psychosocial work. New to the topic myself, I spoke about the potentials and challenges of integrating other types of interventions alongside the delivery of psychosocial services in conflict-affected zones. The panel was one of many to be held that day and after its conclusion, I settled back to listen to the ones that followed. Titled ‘An Integrative Framework on Reconciliation’, the workshop was meant to activate reconciliatory efforts within the different ‘sectors’. Subsequent topics included reconciliation and education, and reconciliation and civil society where presenters spoke in an enthusiastic if speculative manner about the possibilities for fostering reconciliation in their respective fields of work. Towards the afternoon, the panel on human rights and reconciliation took the floor. As their presentations unfolded, I became aware of a growing tension in the room. Some of the earlier presenters who had spoken glowingly of the possibility for reconciliation shifted restlessly in their chairs. It was easy to understand why. The panel’s focus on suffering, or more precisely, the perpetration of violence and violations that led to such suffering, did not reconcile with the easy images of harmony and rapprochement promoted earlier. The question, what should be done about the suffering and the injustices, began to loom over the proceedings.

When the space for discussion finally opened, opinions poured in. Two opposing lines of thought were apparent; one was that trying to hold perpetrators accountable for their violations would impede the peace process, it was counterproductive, and, some suggested, unnecessary. The second line of argument was that true reconciliation would only be possible if there were attempts to address such violations, that it was an integral part of the peace process, and that it was a moral imperative. The debate was cut short without

conclusion when the facilitator took advantage of a pause to announce the next panellists. But it was clear that the discussion had left everybody unsettled.

The opposition to recognising victim grievances and bringing perpetrators to justice surprised me. What was particularly striking was its tone of conviction and sincerity. I had always assumed, perhaps somewhat naively, that those who engaged in civil society activism would not discount suffering or gloss over abuses. Yet the arguments of those who wanted a justice-oriented approach were not wholly convincing either. The most disquieting aspect of the debate for me was that each proposition was formulated on the reasoning of the speakers themselves and not on the basis of what the women and men who had most experienced the direct and indirect effects of the conflict needed or wanted. A few days later emboldened by what we had witnessed, a colleague and I wrote a research proposal aiming to explore public perceptions of human rights and justice issues related to the conflict. Although that particular piece of research would not take place till three years later, other research I was subsequently involved in suggested a deep prevailing scepticism in Sri Lanka about the chances of achieving justice. This scepticism was not only the province of those who had suffered the most gross forms of violence and human rights violations in Sri Lanka's various armed conflicts and counter-insurgencies. People outside the realm of the armed conflict seemed to find their experiences of seeking justice equally unfulfilling. One interviewee informed me rather cynically that, "only the powerful get justice in Sri Lanka" (Samarasinghe, Salih & Hassan 2008 datasets¹). These as well as other events propelled my interest in the social challenges of adequately addressing injustice and violence. When the opportunity to do a PhD came, it was this link between society, suffering and justice that I wanted to look at. This thesis represents my most recent endeavour to answer the question of why for many people in Sri Lanka 'justice' seemed so elusive.

¹ Interview MON.1

Why Study Justice?

It is not surprising that, in the context of a long history of conflict and its attendant experiences of atrocity, many Sri Lankans wrestle – to varying degrees – with questions of the past and how to move beyond its long dark shadow. Indeed, these questions are to be expected especially when, for considerable segments of the population, ‘the past’ is in actuality a continuing reality of loss and hardship. As in the workshop described above, the prevailing popular sentiments – even within the bulk of scholarly works – seem to fall into two broad groups: impatient calls for ‘moving on’, reconciliation and national development or else demands (implicitly or explicitly) for the recognition of violations, the assignation of blame, and various measures of redress and punishment.

I find this binary formulation of the debate obscures possible common ground between the two groups. The focus on specific types of human rights violations delimits the ability for a wider range of people to engage with the issues around obtaining justice for people in Sri Lanka, many of whom suffer from a spectrum of unjust practices (including gross human rights violations of the type people were referring to in that workshop I just described). I am not suggesting that gross human rights violations inflicted in conflict zones do not deserve special recognition and attention. In fact, addressing such human rights violations is a major motive for this work. Nonetheless, I am convinced that there is considerable merit in situating the efforts to achieve justice for such violations in an understanding of the broader context of processes of justice in general in Sri Lanka.

I have found few studies and policy discussions that approach the question of justice from this broader angle. Critical attention tends to be splintered amongst specialised areas such as the neglect of conflict-related human rights violations, shortcomings of the policing and legal systems of Sri Lanka, vagaries of land distribution policy, or unequal access to education or

health services. This has prevented scholars, practitioners and policymakers from stepping back and examining the broader social relations that drive the various ‘unjust’ practices so deplored by many Sri Lankans. Basil Fernando, a renowned jurist, human rights activist, and prolific writer, has also argued that there has to be a profound exploration of the poor record of justice in Sri Lanka and that this cannot be limited to an approach which focuses only on minority rights or the rights of any particular group (2009:103). Alan Keenan makes a very similar observation when he notes that the key to impunity in two very different cases of state-implicated massacre – the Bindunuwewa incident when suspect rebel detainees, some amongst them children, were attacked and killed whilst in a government rehabilitation centre and the Embilipitiya case where the military disappeared a number of schoolboys during the southern insurgency – could be found in the state machinery employed and the general absence of adherence to the rule of law in Sri Lanka, rather than only the often-cited ethnic dynamics of each of these two cases (Keenan 2006). Both scholars state that the politics of justice in Sri Lanka regularly fail to meet the interests and well-being of large numbers of Sri Lankans, including but not only victims of conflict-related human rights violations. Further support of this position comes from the Asian Human Rights Commission, whose damning reports outline numerous incidents of torture and abuse of the poor (from all communities) by the Sri Lankan police (for example see Fernando & Puvimanasinghe 2005). This approach – which calls for spanning across the borders and boundaries of communities in examining an issue – has also recently been used to explore issues around religion and politics (e.g. Goodhand, Klem & Korf 2009) and that of risk and uncertainty in Sri Lankan conflict zones (Korf 2013). Spencer also highlights the dangers of focusing on narrow alliances to a lasting peace (2011).

This thesis is driven by my conviction that an understanding of how the broader political and social environment shapes the possibilities of justice for all is essential to the understanding of how justice works – or not – for a select group of citizens such as victims of human rights

violations. To put it simply, it is first important to understand how justice-seeking processes work in Sri Lanka, in order for us to be able to discuss in greater detail why and how a particular group, or groups, is unable to obtain justice. It will also help us to bring together broader-based interest within the country on the question of justice, with the hope that this will contribute to prevent and address the more extreme forms of human rights violations recently and currently being experienced in Sri Lanka. In this work, I hope to shed more light on the common experience of justice in Sri Lanka so that one can use this to talk knowledgeably about the justice in general in Sri Lanka and how it differs for specific cases.

Justice as encountered in most literature is synonymous with its procedural sense, i.e. the (legal) process by which judgment is made about the correctness of an assertion and (in accordance with rules and law) the assignation of appropriate reward and punishment. Law and justice are not synonymous with one another, however much we rely on the law to settle questions of justice in everyday society. Rather, the question ‘what is justice’ has been a central one to philosophers, rulers, academics and people in any society. From Socrates posing this very question in Plato’s *Republic* to more contemporary musings on the nature, definition and clear criteria for justice, the idea of justice has fired the social and political imagination. It has also remained a very concrete part of society’s everyday concerns.

Solomon and Murphy, in their overview of classic and contemporary readings of justice (1990), present various literary, theological and philosophical material which deals with Socrates’ opening question, ‘what is justice?’ In *Iliad*, for example, Homer associates justice with tribal or communal revenge and vengeance, a formulation of justice which sits uncomfortably with modern conceptions of justice. They argue that theological and philosophical discussions of justice gradually came to imbue notions of retributive justice with elements of mercy, compassion and equality. The ancient Athenian philosopher, Aristotle is credited with advancing the ideas of civil and commutative justice, i.e. social

harmony stemming from acts of righteousness and fair exchange respectively. These formulations of justice were commonly founded on or drew from the authority of the state or God. Solomon and Murphy suggests that the theory of the social contract, first articulated by Thomas Hobbes in *Leviathan* in the seventeenth century but later elaborated on and variously critiqued in the works of John Locke and Jean-Jacques Rousseau form the very core of modern debates about justice and who should be responsible for providing it. The social contract broadly posits that citizens consent to be governed by the state in exchange for a circumscribed freedom to pursue their interests, the protection of their property, and the provision of relative safety and security. It is this contract which obligates the state to pursue and implement the principles of justice in order to legitimise its rule over individuals and the regulation of society and, some would argue, to secure the public good. The conditions under which an ideally rational and just society can be ordered by the state are explored by Rawls in *Theory of Justice* (1971). These are refuted by libertarian philosophers such as Nozick (1974) and Sandel (1982), who question the role of the state as the primary source of justice in society. Nonetheless, there is no denying the force of the state in the operationalisation of justice in contemporary societies or that justice is indeed part of the triad that make up the ideal modern state.

The different conceptions of justice have led to strong debates on how best to operationalise justice and towards what end. Indeed these debates have been made more potent by consideration of notions of free market, private property, equity, equality, and rights in relation to justice. Equally, it is impossible to discount the even more recent insights on the fluid, plural and contextual nature of understandings and practices of justice in communities over place and time (Wilson 1999, Moore 2001). I do not propose to enumerate or explore them all here in much detail but rather want to point to the extensive and lively controversies around thinking about justice.

This thesis is largely about justice in its qualitative sense, i.e. the quality of being fair or just. It starts from the observation that people have low expectations of justice in Sri Lanka and proceeds to explore people's experiences of seeking a just outcome to encountered problems. To merit its meaning, a just outcome requires that those who are involved in mediating or managing a problem or dispute be free from bias or deception, that they are fair to all parties concerned in crediting a claim and that this act is grounded in evidence, reason and conscience. Asked theoretically about their understanding of justice in Sri Lanka, people's answers approximated this meaning as demonstrated in this and other studies I and my colleagues have done (Samarasinghe, Salih & Hassan 2008, Emmanuel & Salih 2006). Their notions resonated strongly with the Rawlsian notion of justice being a virtue of social institutions and in particular, of institutional practice.

The prevailing sentiment, according to informants, was of the pervasiveness of 'injustice' in Sri Lanka – a sentiment not confined to a single or minority community. The ubiquity of violence, the experience of discrimination, and the everyday encounters of corruption and repression were causes of general disgruntlement and frustration. Indeed, everyday conversation and the more formal interaction of the research study were littered with strong and indignant opinions about the shortcomings of the state of justice in Sri Lanka and the unfair treatment meted out to people. The terms of "unjust/unfair" [a'saadharanye] were commonly invoked in sharp grievance or with palpable disgust to describe abuses or misuses of power by state officials or formal institutions.

Most of the research participants in this study believed that ensuring 'justice for all' was a fundamental part of ensuring ordered civilised life, in fact "the bedrock of our society" as described by one well-known activist² in this study. Justice was conceptualised as fair treatment for all and an equal access to resources (and, as she noted "not just in principle but

² Interview 2:20

in fact”). Heavy emphasis was placed on the way that the country’s formal institutions dealt with its diversity of citizens in the distribution of wealth, opportunity and protection – most notably in its institutions, i.e. the courts, in policing, housing, education services, health services, transport facilities, and employment generation. The preliminary pieces of research that colleagues and I conducted on this topic suggest the need to understand the larger dynamics and politics of access to justice in Sri Lanka. This was both in relation to everyday matters as well as in the cases of specific human rights violations.

A pertinent but relatively uncommon critique of the politics of justice in general is the lack of integrating political and social-relational perspectives to analyses of justice-seeking processes (Loveman 1998, Sliep & Meyer-Weitz 2003). In his review of human rights work following state-sanctioned violations in Chile, Uruguay and Argentina, Loveman (1998) flagged the importance of ‘personal-social-political networks’ and of the links between individuals and institutions in determining opportunities and capacity to defend human rights following outrageous atrocities. Because political structures are systematically used to inflict misery upon and constrain the agency of targeted populations, he argues that the politics of justice should constitute a legitimate object of study for scholars and activists interested in questions of justice. Fernando also argues that the problem with formulating a confrontation of the issue of justice in Sri Lanka is that the rule of law has been subordinated to the rule of ‘politics’ (2009:107). I have taken this observation as my point of departure – focusing on the broader question of how ‘just’ and ‘unjust’ outcomes are produced in Sri Lanka.

In literature related to development interventions and governance, state and society are often presented and analysed as separate entities which interact in various ways to produce an objective form of justice. More recently, scholars in the field of anthropology and political studies note that the boundaries between state and society are, in fact, to use Gupta’s (1995)

term ‘blurred’. Similarly, those who study the sector of justice and related areas such as human rights or law point out the ways in which justice, rights and law are products of social relations and contexts. Sociality thus plays some part in how justice – or the lack of it – comes about and perhaps equally, how the concept of justice is constructed, understood, used and changed.

Research Questions

The purpose of this thesis is to understand better the justice-seeking process in Sri Lanka and provide insight into the reasons for widespread dissatisfaction and grievance regarding the fairness of this process. I aim to look at everyday dispute and problem settlement as a means of unravelling the ‘politics’ of justice-seeking in Sri Lanka. Justice-seeking in this instance refers to attempts by people experiencing a problem or dispute to resolve the matter by bringing in others for the purposes of mediating, supporting or otherwise intervening into the situation. I hope to contribute to a better understanding of how and why the processes of justice in Sri Lanka take the form, and produce the effects, they do.

Through my research, I hope to be able to

- identify the key actors and institutions involved in this process, the nature of their involvement and the ways in which their actions and decisions fall short of the expectations of those in difficulty and fuel the prevailing sentiments of grievance and resentment,
- describe the different types of everyday problems and disputes that commonly require justice-seeking efforts, the social and political contexts to these problems, and the ways, if any, in which the context gives rise to the problems and experience people experience,

- explore the dynamics and relations within the justice-seeking process that lead to particular outcomes, how these are perceived and explained by those experiencing the problem, and what aspects of these dynamics and relations are associated with (un)fair or (in)just outcomes, and
- scrutinize the links between state, society and justice as they are evident in the accounts shared by the informants, how these operate within the Sri Lankan context, and compare these to the common conceptualisations of this relationship.

Finally, I hope to be able to offer the findings and knowledge emerging from this study to support ongoing efforts to improve justice-seeking and just outcomes for Sri Lankan citizens.

Interpersonal Disputes, ‘Problems’, and the Study of Justice

I have attempted to answer my research questions through the analysis of a collection of accounts from three sites in Sri Lanka detailing interpersonal disputes or small-scale problems, and the processes by which they were managed. The use of detailed disputes and problem cases to study the process of justice has a long well-established history, especially in the field of legal anthropology. From Schapera’s study of reported actual disputes amongst the Tswana to Max Gluckman’s analysis of observed judicial cases, disputes have served as a useful means of gaining insight into how society manages disagreement and conflict between its members (Schapera 1938, Gluckman 1955), an approach described in greater detail by Epstein (1967). Dispute-processing was used to understand how social order and control was maintained in different societies. Laura Nader’s (1965) observation that disputing and dispute settlement provided a greater understanding of the hitherto-neglected social context of legal processes resulted in disputes ‘displacing law as the subject of study in legal anthropology’ for over two decades (Snyder 1981:145). Over the course of these years, dispute studies initially emphasised the ‘analysis of procedures, structures and

processes' (1981:145), gradually coming to foreground social networks, social actions, and the deployment of strategy and meaning by disputants in their quest for a satisfactory outcome.

The construction of detailed accounts through interviewing has been noted for being a useful tool, since it affords a level of detail that neither a quantitative study nor the survey method offer. The accounts are useful for their rich layers of data and can be used to narrate a story, the details of which can be studied in-depth and at leisure (Skeggs 2001). The accounts can be unravelled for their multiple meanings and information, and they are a record both of process and of representations, as argued by Cortazzi (2001). When given careful consideration at the interview and recording stage, accounts can offer a view to the emotive aspects of experience (Ellis & Flaherty 1992).

More precisely I have tried to understand from the accounts shared with me what contributed to the production of a particular outcome in a particular place, and how the outcome was judged and justified by the informant. The type of small-scale problems that people talked about included everyday tasks such as obtaining electricity and piped water to one's house, getting building plans approved, replacing lost national identity cards, or helping a friend or relative do so. Interpersonal disputes on the other hand referred to problems between neighbours, friends, relatives or family members over matters such as land, water, defaulting on loans, crime, intoxicated behaviour, domestic violence, disagreements, extra-marital relationships, vandalism or children's fights. A few informants talked about direct confrontations with the state, such as police interrogations, assaults and detentions, and in one case the disappearance, of family members or relatives under the charge of 'suspicion'. To relate these cases to the topic of justice in Sri Lanka, I focused not only on the problem, but also on who was involved, what they did, and what was said about how these problems and disputes were managed. In other words, what was considered critical to the production

of a particular outcome, and how did people assess the different outcomes in terms of their fairness or their satisfactory potential?

Indeed, looking closely at the problems and their outcomes shared by the informants in this study, I found a clearer picture of these constitutive elements of justice-seeking from these accounts. The picture revealed details of the most prolific actors, structures, institutions and procedures of dispute and problem management – all of which were relevant to the question of the politics of justice. These accounts showed that satisfactory outcomes were not merely contingent on, but instead actively produced through triumphing over, contesting social and political forces. Justice, or rather versions of it, was shown to depend on local micro-politics, and sometimes not-so-local, i.e. national, politics. Such contestations over power were evident in some of the accounts from this research; local groups long entrusted with the authority to mediate disputes were challenged by relative newcomers, and there were ongoing contests between multiple interpretations about what constituted just outcomes and the satisfactory means to resolve disputes. While an observer or outsider may take these events and their outcomes to be part of the circumstances of life, those who experienced them did not see them as accidental but rather as deliberate impositions by the powerful on the powerless. By saying this, I do not mean that all were accounts of suffering or that they were accompanied by a detailed political analysis. Rather that, when questioned, informants tended to talk about things that were at the limits of their power. The well-off tea-trader, for example, found that it was relatively easy to obtain a building permit to extend his house and described this as a ‘successful’ case but he complained, with a real sense of grievance, about the hostility he encountered whilst filing a complaint at the police station regarding his noisy but somewhat well-connected neighbours.³ I would say that what became apparent in these stories were some of the fault-lines of power within the community and where amongst these

³ Interview 1.6.1

a particular informant could be located. It gave a glimpse into the micro-politics that shape action and the possibility for action.

An exclusive focus on institutional actors, the structures and procedures which comprised the justice-seeking process ran the risk of emphasising organisation and bureaucracy over interaction and dynamics. For this reason, I also encouraged informants to provide a thoughtful analysis of their experiences and strategies. This served to add the intrinsic dimensions of power, motives, relationships and emotions to the accounts they shared. It led to an unfolding – at least partially – of the interactions and exchanges that contributed to the subsequent outcome. The informants were able to point out the social and political networks in which they were embedded, and how their position influenced the options they and the other disputing parties had. More importantly, their accounts also reflected how language and terminology were utilised as strategy by – or against – them in important instances of problem management.

In a close examination of two hearings of disputes amongst rural Chagga farmers, Sally Falk Moore shows how disputing and dispute settlements were simultaneously exercises in ‘an articulation of interests between different levels and kinds of (social) organisation’ (1977:186). These interests impinged upon the events and competed for consequence, reflecting an extreme localism of social control that dominated the lives of these farmers. The idea of law and dispute settlement as exercises of social control (though primarily within a consensual and normative framework) dominated early anthropology. These ideas have re-emerged recently, but with a strongly critical perspective that applies notions of power and hegemony and views disputes as an explicit extension of broader political struggle.

Given that the disputes and problems in this study almost always featured third party intervention, Moore’s recognition of the influences that ‘others’ have on the process of dispute settlement is pertinent. She argues that ‘the choices and manipulations’ by local

authorities and community leadership are as integral to the outcome as those of the disputants. They have sometimes been observed to serve their own interests, if not directly benefiting from a particular settlement, then indirectly doing so by ruling to preserve a particular social order (2001:103). As shall be seen, something of this process was also discernible in the accounts shared with me and the research assistants.

Moore points to the influences of ‘genealogical closeness of the kinship relationship, friendship, educational-occupational status, age, sex, or other grounds for identification’ in this decision, as well as situational factors such as ‘...indebtedness because of transactions in the past, or the wish to build up credit because of anticipated transactions in the future’ (1987:174). In line with her observations, the informants from my research expressly implicated past relationships or aspects of shared identities in their decisions to seek assistance from – or provide help for – someone in situations of crisis or need. These affiliations did not always coincide with their broader class, ethnic or political ones; at times they were forged out of personal individual histories and circumstance. Temporary alliances springing from individual interests sometimes cut across the longer-lasting clusters of class or ethnic interests – suggesting that in a dispute, people took a gamble – either, calculated or emotionally-driven – in whom they supported and how (Moore 1977:187).

Moore has also noted that, since the 1980s, the object of study in legal anthropology has shifted from locally-situated dispute-processing to encompass ‘immense fields of action’ that include national and transnational matters, international treaties and trade agreements (2001:95, see also Merry 1997). National and global legal processes are recognised to intersect integrally with the politics of local community. Thus, even in the midst of seemingly very local – and interpersonal – disputes and problem dynamics in this study, it was possible to trace links outwards and upwards from local actors and institutions to events and processes at provincial, national or transnational scales. These links were visibly

obvious when, for instance, disputing informants benefited from belonging to the ruling party in power or in the cases where international aid was used to support local organisations or community groups act as mediators and problem-solvers.

Given the identification of these diversely influential ‘fields of action’, it is no surprise that the question about ‘where power actually resides’ has been raised in recent ethnographies of legal anthropology (Moore 2001:107). The idea of a central source of power – resident in the idea of a unified state entity which enforced the rule of law – has been exploded to be replaced with a view that emphasises ‘legal pluralism’. The term is used to refer to the recognition that there is simultaneous competition both within the multiple arms of the state, and between the state and other entities (including non-state groups and other states and transnational agencies), for legal authority and the power to enforce differing versions of law, ideas of justice, human rights, and (legal and non-legal) social norms (Merry 1997, Moore 2001, Wilson 1997).

Structural Violence within Processes of Justice

The focus on outcomes pointed to the unfolding nature of these events. The disputes and problems that people talked of were part of an ongoing story; they came from particular socio-political histories – which were personal histories as well – and got played out in a particular social context. In the telling, the event and its eventual outcome were placed almost simultaneously in historical context, in relation to the prevailing social and political arrangements, and in connection to a possible future for an informant and her or his family. For example, land distributed under one political scheme was revoked later under the policies of another and reinstated yet again under subsequent political leadership; many individuals who had assumed that their ownership of land was reasonably secure found themselves struggling – at different times against different authorities – to assert their

property rights against opposing political forces. Informants showed an awareness of the way in which broader social forces played a role in shaping the vicissitudes of their ongoing disputes and problems. Yet, unresolved problems continued to haunt them and their families; there was talk of land lost, injuries sustained and resentments which could not be laid to rest. It is important to envisage the past and the future in the telling of these stories, as the informants surely did. They had to be re-told with an understanding of what was at stake at the point of a problem or dispute; not just unpleasantness or humiliation, distressing as these can be, but rather real losses of power and status, or real risks of harm and diminishment, as suggested by Michael Robert's notion of socially definitive moments (Roberts 1974).

Labelling the events contained in these accounts as 'small-scale' may be misleading in one sense. Literature from Sri Lanka and the stories in this research suggest that events of the nature described here are not few in number but on the contrary, persistently widespread. The diminutive nature of these events, in that taken individually they 'only' concern an individual or family or have 'only' to do with everyday-type difficulties, causes us to overlook the routine nature of this type of violence and the suffering it engenders. Such violence, as Gyanendra Pandey notes, is 'written into the making and continuing of contemporary political arrangements' (2006:1). He points out that if violence is organised enough and of a large enough scale, paradoxically it is less likely to be recognised as violence. Perhaps this accounts for my surprise when the numbers of individual stories of violence in my research started stacking up, and recognising in the final analysis that these 'small-scale' events amounted to the suffering of very large numbers of people indeed and that the non-conflict zones of Sri Lanka, where most of this research was located, were themselves, as Pandey describes of his violence-enabling conditions, 'shot through with violence' (2006:1). For example, 31% of the accounts collected were primarily to do with situations of violence, ranging from stories of domestic and sexual violence to incidents of

religious or ethnic violence. Violence, in all its various forms, was also not absent in many of the remaining accounts; rather it co-existed alongside the primary issue presented by the informant. Land and water disputes were often accompanied by intimidation, assaults, stabbing and even, as in one case, murder. If I were to include the ‘banal everyday exercise of power’ (Pandey 2006:15) evident in ordinary practices of oppression and exploitation, then more than half the accounts were directly concerned with such violence.

Compared to the large-scale violence familiar to many Sri Lankans over the past decades of armed conflict, and in contrast to the type usually encountered in an anthropology of violence, the nature of ‘critical events’ (Das 1995) in this study seemed remarkably small, even if not insignificant. Consequently, the ‘violence’ inhered amongst these accounts seemed to me, at first, a thing separate. Nonetheless, as I read through them more critically, I saw how these small-scale low-level encounters added up and, while not constituting nor accounting for the whole of political violence in Sri Lanka, they were certainly contiguous with it. These were instances of the ‘normal’ social relations that Spencer mentions as foreshadowing acts of political violence (2007:133). Like in their large-scale counterparts, the violence and injustice in these small-scale events possessed a quality of evoking a sense of horror and outrage at the suffering involved.

Part of the outrage stems from the role and consequences of human agency, i.e. the decisions and actions of other people, through which seemingly needless hardships were inflicted upon informants and their families. In most cases, these decisions and choice of actions could be attributed to a complex mix of historical and economic forces that shaped social relationships, identities and obligations whereby decision-makers privileged some individuals or groups of people – and consequently disfavoured others. Paul Farmer (2005) elaborates on this eloquently in his powerful book, *Pathologies of Power*, when he notes that some people were at risk of suffering simply by virtue of social, economic and historic

forces that served to curb their options and constrain their agency. He pointed out that to properly understand any individual account of misery, it was necessary to step back and situate the individual within her or his broader mix of ‘culture, history and political economy’ (2005:41). Such a view would identify the many different social axes – ethnicity, race, educational status, political affiliation, gender or the status of being poor – which determined the risk for suffering and hardship. In the accounts that I have collected, the distribution of risk lay more heavily on some groups of people rather than others (e.g. some ethnic groups), and as Farmer (2005:44) forcefully asserts, the poor indeed tended to be the ‘least well-defended’ even in these stories.

In Sri Lanka, studies have shown the comparative vulnerability of certain groups to structural violence and suffering. The opportunity for equal and fair treatment is deemed low if one is poor, a woman, or from a minority or from other socially suspect group or community (Fernando 2009). Informants from these studies were adamant that justice for the poor and marginalised were consistently trumped by the interests of the wealthy and powerful. Torture of the poor by the police is said to be endemic regardless of ethnic background, whilst disappearances and abductions were much more likely amongst Tamil, but not Sinhala or Muslim, communities in the current context. The ‘rule’ of law was described as subject to the influence of money, of language skills (especially English), of one’s financial and social ability, and of one’s density and depth of network relations. Powerful people were able to harness financial and technological resources to their cause, or press for the attention of the media, politicians and other state officials.

Nonetheless, not all poor people (nor those of a specific at-risk group) were uniformly vulnerable or at risk in quite the same way. Social connections for instance, especially political ones, could provide some level of protection. It was also important to pay attention to the ways in which groups of people were made vulnerable through changing political and

economic dynamics. The diversity of experiences of structural violence (and its attendant suffering) needed to be fully acknowledged; this, as Kleinman, Das, and Lock (1997) have suggested, would complicate arrival at hasty conclusions about suffering, structural and political violence, and of general chances for justice.

In the stories I share, the emphasis was on suffering at the individual or family level; but poverty, ethnicity, gender, political party affiliation, and the context of war were used by informants to explain and contextualise their particular experience. They were seen as contributing and causative factors, both in why they faced a particular problem and how these influenced outcome. As such, it was impossible to ignore the contribution of structural factors to the distress and difficulties of many of the informants.

Vulnerability and risk were not fixed categories; rather social characteristics – which defined who were vulnerable, when, and to what kind of suffering – were mutable over time and determined by those in positions of power and authority. Pandey (2006:15) notes that the state engages in an ‘unrelenting construction of enemies of the state and the concomitant denial of equal rights or respect to the latter’. They do so out of a fear that the identified individuals or groups constitute a threat to the balance of power or to the ruling classes. In such cases, he argues, their very presence is interpreted as a threat, and violence against those who constitute such supposed threats are immanent throughout the social fabric. The categories of persons at risk change with changing political circumstances and this aspect of structural violence turned out to be a central feature of analysis to understand the accounts of justice in this study.

Accessing the Politics of Justice through Small-Scale ‘Critical Events’

The choice of small-scale disputes or problems for this study followed a second reasoning. Critical events have been noted for their ability to bring about new modes of action and the

emergence of new forms of actors (Das 1995), just as conflict situations and violence have also been noted for their transformative and productive potential (Spencer 2007). I have viewed these disputes and problems from the perspective of individuals – or families – faced with an event which they see as ‘critical’, i.e. as having the potential to change their lives for the better or for the worse. There was little opportunity for informants to avoid facing problems or disputes, as many of the problems and disputes arose from the living of daily life, i.e. from everyday issues such as renewing or replacing lost identity cards to inheriting or having land or simply belonging to a particular ethnicity, religion or caste. Each such event and its outcome had implications for their social status, family progress, emotional welfare, economic wellbeing, and sometimes even their physical security. For this reason, the accounts were replete with a sense of urgency and agency. For the informants, it was almost impossible not to act with what means were available to them when placed in such a situation. Their actions activated several local institutions and sometimes national ones, revealing – as Das (1995) describes of ‘critical events’ – the interrelationships between institutions.

Zigon argues that constructing narratives offers an oblique way of accessing people’s justifications and moral concerns (2008). They allow us to see the impact and meaning of the problem and its outcome and to understand what people think about them. However, the articulations should not be taken to be individual pristine perspectives – unconnected to the social and political world – of what should be or has had to be done in the event of a problem. The colonial and post-colonial history of violence in Sri Lanka has had a definitive impact on the moral terrain of the country. Social relations and institutional practices have had to evolve in order to cope with and incorporate circumstances and dilemmas previously not encountered and possibly not even thought of. For example, reflecting on the Southern insurgencies of Sri Lanka, ethnographers have raised – and attempted to answer – the question of how one lives with one’s torturers or with one’s own violent and morally

contentious past (Perera 1995, Wadugodapitiya 2010). Similarly, how should one conceptualise the moral role of the state when it – and its various agents such as the police and army – is implicated in the abuse and misuse of its own citizens? The ‘critical events’ in the accounts provide a backdrop that brought into sharp relief the moral decisions and actions taken by informants.

My initial reactions were, on the whole, unsettling. Many of the informants revealed (seemingly without reflection or reservation) actions which were, for me, morally problematic. Some were proud of their ability to ‘get’ the police to assault a troublesome villager or of their role in a violent protest against a neighbouring or local community; others felt justified in reporting ‘suspicious’ visitors to the authorities simply to teach a family a lesson or in having influential friends who could ‘play’ the system to their advantage and secure a favourable end-result. These stories provided interesting insights into the sometimes-untroubled manner in which people felt supported in taking actions which had clearly disastrous consequences for others.

Yet, the stories from this research also showed why a specific person may have chosen (or had little choice but) to align herself or himself with a particular moral position in regard to a particular situation at a particular time. Indeed, the question could be asked what might have happened to them – what was perhaps possible to happen – if they had not? To answer this question, it was necessary to step back far enough to see the moral context in which these decisions were taken. While, in some instances, it seemed an indisputable matter of thoughtless – and even gleeful – self-interest, in others these actions were taken reluctantly with an overwhelming sense of a lack of other choices of action. The degree of choice that a person had to make such decisions revealed the available space for agency and resistance and for charting one’s own course of moral action. Such stories showed us not only the

“moral textures and social changes in the public sphere” (Plummer 2001:403) but also the conditions of possibility for moral acts.

Opportunistic violence and the infliction of injury

It was impossible for me to overlook the more interpersonal aspects of how violence was enacted and perpetuated in these accounts. A particularly disquieting aspect of the stories was its stark descriptions of denunciation, reporting and informing by intimates and friends that added to the sense of everyday violence in the lives of the informants. A number of the problems recounted by people arose as a result of reports by neighbours and relatives to local authorities that deliberately – even maliciously – cast the informants in unfavourable light. For example, some informants had been detained by the police and subjected to assault as a result of being described to the police as the suspected thief in local burglary incidents. Others were informed upon as ‘troublesome’ neighbours (playing loud music, inappropriate usage of a common road, or for disorderly conduct); consequently they were subjected to harassment, intimidation and other hostile responses by the police or the GN (i.e. the Grama Seva Niladhari or the state administrative official at village-level). Families who were doing well within the resettlement camps of the North-west province became the target of rumours and reports about pre- or extra-marital affairs resulting in formal inquiries by the mosque trust board, and in some cases, the strain of which led to marital breakdown.

These experiences were simultaneously a direct consequence of individual action by neighbours, relatives or other members of the village and a measure of structural vulnerability in the community. These dimensions were commented upon and repeatedly emphasised by many informants; they noted that their experience of hardship or violation had been intentionally brought upon them by jealous and interfering members of society, sometimes their own kin or neighbours. These ideas of jealousies, petty rivalries, grudges,

resentment and envy represent what Geschiere (1977) terms the 'dark side of intimacy'. Some commentators on violence have noted that local political violence tended to run through the 'capillary relations of everyday interaction' (Spencer 2000:134) where people used the broader context of conflict to justify action which resulted from personal animosity rather than from political or social conviction (Kalyvas 2003).

Dhananjali Wadugodupitiya (2010) has used the term 'opportunistic violence' to refer to the instrumental use of context or incident to denounce someone to local authorities. She uses this term to describe the acts of revenge and denunciation that took place during the period of 'terror' associated with an insurrection and counter-insurgency campaign in the late 1970s and early 1980s in the south of Sri Lanka. The consequences of such denunciations were detention, severe torture, grotesque acts of brutality and frequently death. The subject of very little study, 'opportunistic violence' as described by Wadugodupitiya (2010) was a deeply disturbing moral phenomenon which few research participants – and scholars – felt comfortable exploring in greater detail. To begin with, it was enacted between 'intimates' and within 'community'. The sheer scale of violence was indeed terrifying.

In her analysis of the moral consequences of opportunistic violence, Wadugodupitiya (2010) has focused on the strong silence and sense of taboo associated with acknowledging the perpetration of these acts in Sri Lanka. She points out that people saw these acts of opportunistic violence as an aberration of the times, i.e. brought on by the unsettling and chaotic context of terror. Surprisingly, in my interviews, an unexpected number of informants unselfconsciously described their own proactive role in the perpetration of those very types of acts which resulted in injury, harm, harassment or suffering to other parties – and which denied the possibility of justice for others. Such accounts generally occurred when informants were talking about how they had 'successfully' managed a problem. They described reporting on neighbours or denouncing people to local authorities for engaging in

behaviour they deemed illicit or unsuitable and for being suspicious. Their accounts suggested that they had carried out the denunciations with full knowledge of the types of consequences to which they were exposing these people – and in fact for some people, they noted these to be the very motivation for doing so.

For example, one informant in the Hill-country explained how he had reported his Tamil neighbour to the police for parking his vegetable lorry in a way which blocked easy passage on the road.⁴ He admitted the vehicle had not been illegally – only inconveniently – parked; but he had been inclined to involve the police because he knew with his own amiable relationship to the GN, that the police would take a serious view of this inconvenience and impress on the neighbour the necessity of moving his vehicle. In fact, the neighbour's sulky responses to the police officer's inquiries had led to his being assaulted, an outcome which the informant felt quite at ease to share and seemingly took some delight in. In his view, the police assault simply served to bring his neighbour down a peg or two – and his joy and sense of self-righteousness with regard to his actions and the outcome were evident in his recounting of the event.

These accounts suggest that informant interpreted their actions not only as 'opportunistic' as much as strategic. They felt themselves to have sufficient justification for their choice of action and were not reluctant to share their sense of satisfaction at the consequences – even when the consequences were violent. Simultaneously their accounts suggested that many of them themselves had been victims of similar acts of 'opportunistic violence' and felt these to be an inevitable and 'normal' part of social relations in the community; indeed many such acts of opportunistic violence dovetailed with aspects of structural violence described below. Consequently, these acts contributed to the prevailing sense of suffering and injustice; victims of 'opportunistic violence' felt the double impacts of their structural position and of

⁴ Interview 2.23.1

powerful well-connected ‘intimates’ who could manipulate indifferent or colluding institutional actors and state agents.

‘Social Capital’ and the Reproduction of Suffering and Injustice

Suffering and hardship formed the backdrop against which many of these stories took place. Inability to secure the money for her migrant son to return from the Middle East meant that an elderly parent with severe diabetes could foresee no alternative for herself but a lonely existence in her dilapidated house and hard daily labour to earn a living. Similarly, a family whose part of land had been claimed by one of their neighbours found themselves embroiled in an expensive court case spanning ten years during which time their financial status and – more poignantly for them – the children’s education and emotional well-being suffered irreparably.

Informants from these stories expressed a myriad of emotions from grief, anger, resentment, bitterness, shame, sadness, fear, trepidation, outrage, forbearance, resignation, frustration, betrayal, despair, and pain about their circumstances. Some also talked of being tired and fatigued and of living in a constant state of anxiety, worry and fear. Arthur Kleinman, Veena Das and Margaret Lock note suffering to be ‘a social (and socially-inflicted) experience’ (1997:xxiv). Although the conventional emphasis has been on the individual, psychological and biomedical interpretations, they argue suffering is better-conceptualised as a product of powerful political, economic and institutional forces that ‘inflict injuries on human experience’ (1997, also see Martin-Baro 1994 whose critique of contemporary mainstream psychology is its ahistorical and apolitical perspective). Recent conceptualisations of suffering (and its inverse, of well-being) reiterate the idea of an intrinsic – even mutually constitutive – connection between the social and political and the subjective and personal (Clancy & Hamber 2008, PADHI 2008, Strang & Ager 2003).

It is not surprising then that the stories people told me and the research assistants were accounts which incorporated the interpersonal, social, and political origins of their situations. Part of their distress and frustration (and sense of betrayal) was linked to their recognition of the structural (and opportunistic) nature of their suffering. They recognised that people either with power or connected to those in power were comparatively advantaged in this respect.

The importance of connections in securing favourable outcomes was a recurring theme within these stories. Having social connections simply meant ‘who you knew’, but in these accounts, it also referred to the ability to leverage useful contacts through one’s already existing acquaintances and friends. The ability to harness one’s social resources to advantage has been conceptualised as ‘social capital’, a term made famous by Pierre Bourdieu (1986) and later, mainstream by Robert Putnam (2000). Putnam’s is primarily a functionalist approach; he sees social capital as a largely ‘unproblematic asset’ widely available to all who pursue it and he emphasises its positive transformative potential (Arneil 2006, Svendsen 2006). Bourdieu’s is the more critical version; he focuses on the social-relational aspect and argues that the well-connected are able to attract further social capital (in the same way that economically wealthy are more easily able to increase their riches) thereby reproducing and further entrenching the existing status quo. Bourdieu’s version allows for acknowledgement of the shadow side of social capital (Svendsen 2006). This conceptualisation of social capital is essential to render the politics of justice and of justice-seeking processes comprehensible.

Looking at justice in diverse communities, Barbara Arneil states that the ‘nature of social connections has a decisive impact on whether the needs and interests of a certain group are served’ and therefore is ‘what ultimately determines its capacity for justice’ (2006:105). Indeed in seeking to settle disputes, it was the relative strength of networks and personal

links between disputants that were called into play. Strength however was not simply located within a particular group; collective backing for a decision or action that transcended a particular network or a certain group also seemed to play an influential role in the capacity to achieve justice.

Justice, Society and Political Action

In her book *Trauma and Recovery*, Judith Herman (1997) argues that it is impossible to remain an uninvolved bystander when confronted with an act of violence. One either sides with the perpetrator even by the act of doing nothing, or with the victim even when solidarity with the victim and condemnation of the violation is only expressed verbally. She argues how the reconstruction and restoration of the injured self is a social and moral process, dependent on nurturing social relationships, and sometimes requiring political action. Her point is that achieving justice, especially for victims of violence, requires a broader social and political movement because it involves action amidst sustained public support. Herman argues that victims' appeals for justice are likely to go unheeded without a process of explication and legitimation. The unjust nature of the suffering of individuals and groups has to be made comprehensible to others, and its causes and processes made explicit, before others may be willing – or even able – to validate it.

Her claims point to the essential work of convincing people to identify and acknowledge certain acts as atrocities and persuading them that these atrocities have indeed been committed within their midst, and demand of them an appropriate response for justice and the recovery of victims. Thus, the increase in the number of people (and especially people of different kinds of power) who subscribe to a particular notion of justice that supports one group or groups in society can be empowering from a social capital point of view. Perhaps this accounted for why, when an issue transcended a certain group or network, it sometimes

helped the course of an outcome. (Conversely, of course, if there was increased antipathy towards an individual or group, it is possible that their chances of justice were diminished as a consequence.) My interviews with a number of policymakers, practitioners and civil society activists in the course of this study confirmed this view. Part of their work was in convincing others in positions of power – state administrators, lawyers, doctors, sometimes even the family members of victims – about the validity of issues experienced by survivors of atrocities and victims of injustice.

They do so against the tide of what Nancy Scheper-Hughes terms the ‘averted gaze’ (1992). She points out how people – and especially those with the power and responsibility to assist with the prevention and amelioration of suffering – tend to dismiss, even belittle, suffering that is visible in society. Overlooking or normalising such suffering exacts a moral cost from witnesses and bystanders who become inured (Kleinman 2000). It is this inability to acknowledge pain which Das condemns as a moral failure and sees as essential for the continuation of political abuse (1997). Cavell argues any silencing of suffering must be closely scrutinised and interrogated (2000); the averted gaze must be made to look at suffering and distress.

Identifying with others’ suffering – the urgency of their pain and distress – is a cardinal step towards such acknowledgment. Paul Hoggett identifies compassion and anger as key moral sentiments necessary for ‘progressive’ political movements at the heart of which is an acknowledgement of suffering and injustice (2006). Many authors have faulted aspects of modern society for shortcomings in a compassionate response to suffering. Both Cohen (2001) and Kleinman (2000) criticise popular political and media portrayals that serve to desensitise people to the suffering of others. Others have criticised liberal capitalism for its professionalization, marketisation and routinisation of caring and care practices (Hoggett 2006, Schmid 2000). Ideological discourses – that term some of its citizens as ‘deserving’ of

protection and support, and others as not – are also seen to play a role in restricting people's empathic emotions. These discourses may depict suffering as inevitable – a necessary by-product, for example – or as the result of individual inadequacies and failures, as stipulated in the just-world belief hypotheses first put forward by Lerner (1970, Lerner & Montada 1998).

Martin-Baro sees quests for justice (and recovery) as profoundly political processes (1994). The victims and their supporters work, for the most part, against the might of the perpetrators who would prefer to see the victim silenced, the violations ignored, ridiculed or even justified. Martin-Baro utilises Freire's (1971, 1978) concept of consciousness-raising to indicate the work that must be done to ensure a significant proportion of the population make the necessary links, and come to a critical understanding of themselves, their world and where they stand in it in relation to the committed atrocities. Individuals and groups who amplify the voice of victims and the voiceless are crucial to this process of conscientisation and of eliciting the key moral sentiments amongst wider groups on behalf of those who have been victimised.

This observation is borne out by the various efforts worldwide to hold perpetrators of large-scale violence accountable following the end of authoritarian or repressive regimes (Hayner 2001, Minow 1998). Most of these efforts began with the publicising of documented stories of violation and injustice but they did not end there. While people might affirm the rights of others to redress, many victims and their supporters found their claims could only be realised through the social and political willingness to allocate – or tolerate – the expenditure of (public) resources to help someone or a group of people substantiate a particular claim. This could be for, for example, the costs of investigation, punishment, special entitlements and protections, and compensation. Legislators and politicians, generally influenced by the interests of the dominant classes and by strong public opinion, are much more likely to

respond when there was widespread support to prevent suffering or redress atrocities. This brings us, in very practical terms, to the roles of the state and society in processes of justice.

State, Law, and Justice

Indeed, the question of how to study the state has been the subject of much debate within political and anthropological theory. Philip Abrams (1988) refers to the mid-twentieth century call for a shift of focus in social inquiry from ‘the state’ to political systems and institutions (see for example Radcliffe-Brown 1940). Consequently, political science and political theory paid attention to the set-up of government: electoral systems, political parties, and the like whilst ‘the state’ disappeared as an object of study for a considerable period of time. In the 1960s and 1970s, power and resistance became the dominant themes by which government and politics were appraised (Spencer 2007).

One of the first signs of change was an edited volume by Peter Evans, Dietrich Rueschemeyer and Theda Skocpol (1985) with the title *‘Bringing the State Back In’* that made an eloquent appeal and convincing argument about the need for a political theory which re-engaged ‘the state’ as a credible object of study. Equally influential was Jonathan Spencer’s (1990, 1997) emphasis on recognition of the culturally-inflected nature of the state. In defining ‘the political’, Spencer stated that it should encompass the ‘different ways in which people have identified, created or reacted to an area of life and a set of practices they themselves refer to as the political – sometimes including parties, usually including politicians, almost always including the post-colonial state’ (1997:4).

The Weberian conceptualisation of the state as a territorially-bound organisational entity possessing central executive authority that enforced administrative and legal order upon its citizens and upon all actions and exchanges within its jurisdiction went – until relatively recently – quite unchallenged (Weber 1964, Amarasuriya 2010). Studying ‘the state’

initially meant attending to its constituent structures and institutions and to its functions and effects (e.g. Miliband 1969, Abrams 1988). Analysing the institutions of the police, the army, the courts, schools, civil service, law and legal services were all seen as an effective and concrete means to understanding the ways in which ‘the state’ functioned. Philip Abrams also introduced the state as ‘an ideological project’, arguing that its symbolic power must be equally comprehended to appreciate its role in directing the conduct and relationships of citizens (1988). He argued that scholars of the state should account not only for a ‘state-system’ but also for a ‘state-idea’. The ideological power of the state is not to be underestimated, given how the state is invoked by various actors for very different purposes. Indeed, the power of the state is also apparent in how large numbers of citizens have made the state ‘a zone of hope’, looking towards the state for providing the framework and conditions by which to fulfil their aspirations and ensure their rights, for protection from violence, harm and hardship, and for the provision of basic services to improve their quality of life (see for example, Douzinas 2000, Merry 1990, Spencer 2007).

Both these notions – the state as a system and the state as an idea – are relevant to understanding the functioning of the state within the stories shared with me by the informants to this study. In the study on local perceptions of human rights and justice, my colleagues and I discovered that almost all those who were interviewed unequivocally expected ‘the state’ or ‘the government’ to be the primary source of justice for their and others’ grievances (Samarasinghe, Salih & Hassan 2008), a globally popular and promoted view also evident in other literature where the state is seen as the rightful arbiter for the province of justice and the rule of law (e.g. UNDP 2000). The state is present in any contemporary discussion of justice and human rights violations, even though it is sometimes called upon to act against itself. In this study as well, the state – or rather its agents – was the most commonly sought to manage disputes and to help resolve problems. It was explained by most informants as being ‘the correct choice’ for the management of disputes.

Contrary to Geertz's assertion that law is primarily about 'meaning rather than machinery' (1983:232) the processes of justice described in this study concerned plenty of the machinery and apparatus of the state. Using the political powers which were 'hidden behind the institutional front-stage of the state' (Abrams 1988), mediators, disputants and informants used the structures of the state to very real effect. From the instrumental use of police officers to harass and intimidate 'troublesome' and 'suspect' villagers to the manipulations of witness testimony in courts, the accounts revealed how police and legal institutions of Sri Lanka could be strategically used by the powerful and the rich and were instrumental to the production of desired outcomes and of individual or collective interests.

Closer analyses and ethnographies of the state in the everyday lives of citizens have upended the long-held view of the state as a coherent, unified and internally consistent entity neatly demarcated and separate from society (Das & Poole 2004, Fuller & Benei 2001). Das and Poole's (2004) edited volume on anthropology and the state showcases 'the state' as constituting different institutions, many of which pursued quite separate, and sometimes even competing and conflicting, agendas and policies. Timothy Mitchell describes the state as 'being permeated on all sides by various social elements' making its 'edges uncertain' (1991:88), whilst in Akhil Gupta's (1995) study, the boundaries between the state and society are shown to be, in fact, rather 'blurred'.

The disaggregated nature of the state, of which these authors speak, is very evident within the accounts collected for this study. The 'multiple agencies, organisations, levels, agendas, and centres' mentioned by Gupta (1995:392), were utilised and accessed in competing ways by the various parties to the conflict and by those seeking to resolve a particular problem. Very often, disputing parties would inform and request the engagement of several agents of the state (e.g. the local council member, the police officials, the GN, state administrative

officials at district-level administrative offices) simultaneously with each being called upon to contribute in their capacity to the resolution of the matter.

Similarly, their systems of decision-making and the decisions were affected by considerations that transcended the locale, and incorporated influences from the national and even the international stage. Moreover as the state agents leveraged different mechanisms and practices towards the interests of those on whose behalf they were working, they discovered that they were sometimes being resisted and challenged by other quarters of the state. Council members keen to assist some of their constituents, who wanted to set up a culvert to divert rainwater that regularly flooded their houses, were opposed by other council members as well as the planning office as a result of differing political affiliations.

Additionally, this study revealed that the multi-faceted nature of the state itself was replicated in the multi-valence of the state agent him- or herself. The interactions between these state agents and different members of the communities showed that, in order to get things done, it was to the different aspects of the agent that people appealed. For example, a police officer might be appealed to as a neighbour and long-standing friend of a family but another group might resort to putting pressure on the police officer's superior so that he has to deal with the situation within the constraints of the hierarchical police-police relationships. The discretionary power given to the police officer could be instrumentally utilised in these ways, making the power of the state quite personalistic in a sense. Studies of the self (like those of the state) have mostly taken as its unit of analysis a singular entity, although several authors have argued for multiplicity of selves (see Battaglia 1995) and of identities which affect how people behave differently across varying contexts (Stryker 2000). This study reiterates this latter position and argues for the need to see people as consisting of multiple selves, each becoming salient in response to specific aspects of a situation.

What happens to the promise of justice, of the hope for law and order, when the entities charged with these tasks – the institutions and the actors themselves – are shown to be fragmented, conflicted, incoherent and sometimes personally invested? Justice, law and order become difficult to pin down in this context, taking on the conflicting and fragmentary qualities of these actors and systems. Such a view of the state, of state agents and other actors provides us with some inkling of how the processes of justice can get compromised in the interstices between the structures of the state and the agency of the actors. ‘Justice’ becomes a constant struggle across these many forces, it is remade and renegotiated in each instance of being claimed and granted. Douzinas (2000) sounds a cautionary note, insisting that the state’s strong influence in the way legal categories and entitlements of citizens are made, remade or unmade has an impact on the operations of the political and legal institutions of a country. This becomes much more significant in the context of tension and flux, and especially in the situation of civil conflict as is the history in Sri Lanka.

State and the Politics of Conflict in Sri Lanka

The history of the post-colonial Sri Lankan state and that of its post-independence years of conflict and war are often difficult to separate. Spencer points to the ‘fault-lines established in the electoral politics of the 1930s’ as having laid the foundations for the politics of identity that have led to recurring ethnic and political violence within the structure and dynamics of representative democracy in Sri Lanka (2008:611). Nira Wickremasinghe’s detailed account of different groups’ frantic appeals to the colonial government for recognition of separate racial and ethnic identity in order to secure representation at the Legislative Council provides further background to such identity politics (2006, also see Nissan & Stirrat 1990, McGilvray 2011).

The literature on the various conflicts of Sri Lanka – between and within the Sinhalese, Tamils, and Muslims – is ample and I shall not be reiterating these here (see Bastian 1999, Spencer 1990, Thangarajah 2000, Perera 1998, McGilvray 2008 for detailed study of this history). Instead I hope to provide a short summary of how the national politics of the country served to produce and perpetuate these different conflicts. In particular I am interested in outlining the conflict background within which the legal, law enforcement and armed security agencies attained the not-insignificant level of powers so evidently influential in the everyday dynamics of dispute settlement in the three sites of research in this study.

The Sinhala Buddhist chauvinism which took hold in the post-independence climate was partly a response to the uneven development and inequality of opportunity of the colonial landscape; for instance, high-caste Sri Lankan Tamils were better represented in the colonial civil service than were the Sinhalese. Sinhala politicians could not resist the populist electoral opportunities provided by universal adult suffrage in a multi-ethnic country (Roberts 1994); several politicians, amongst them the charismatic SWRD Bandaranaike, the previously committed leftist Colvin R de Silva and later on JR Jayawardene, remade themselves in the image of the devout Sinhala Buddhist, and emphasised their linguistic and religious identity in a bid to win votes, stirring up antagonism against minority groups (Roberts 1994). In response, minority ethnic groups formed their own parties; the Tamil Congress, the Federal Party, the Ceylon Muslim League, and the Ceylon Indian Congress (representing South Indian plantation labour brought in under colonial rule) date from this period.

In 1956, SWRD Bandaranaike's Sri Lanka Freedom Party (SLFP) won the elections in coalition with a number of Leftist parties (Roberts 1994). Bandaranaike's politics drew heavily on a communalist, nationalist and populist agenda to garner majority support. He introduced the Sinhala Only Act designating Sinhala as the only official administrative

language. This Act is widely credited with the escalation of political violence between Tamils and Sinhalese. Tamil grievance increased when subsequent attempts to redress the situation (the Pacts) were abandoned to appease the powerful Buddhist lobby. In 1959, Bandaranaike was assassinated by radical Buddhist elements and his widow Sirimavo Bandaranaike took up the helm of leadership.

In the meantime, public services such as free education and healthcare, despite being established from the time of independence, failed to ensure the anticipated equal distribution of its achievements. For example, revenue generated from the plantation sector was redistributed across the population. But very little of either service – health or education – were enjoyed by the disenfranchised Hill-Country (formerly Indian) Tamils who provided the labour for this sector (Bigdon 2006). Equally, as the economy declined, the state could not fulfil growing demands for employment and social mobility across the country even amongst the Sinhalese majority, prompting the first 1971 insurrection led by the Marxist political party, Janata Vimukti Peramuna (JVP).

The insurrection was a revolt of the country's youth, but its clumsy execution led to a quick suppression. The youth were primarily educated rural Sinhala-Buddhist men in socio-economic jobs of low status (Obeyesekere 1974) whose frustration stemmed from a stagnant economic climate that hindered social mobility. To compound matters, the remaining scarce jobs were brought under political patronage through a deliberate deterioration of competitive examinations for civil service. All recruitments were decided by Ministers of State through the Members of Parliament (MPs) for the district, privileging political connections (instead of educational qualifications).

While socio-economic frustration built up amongst rural Sinhalese youth, national policies over language, education, employment, and land continued to aggravate Tamil grievance. University quotas introduced in the 1970s hit hardest on young Tamils. New land and

opportunities developed through new infrastructural projects favoured primarily Sinhala-Buddhist applicants and those with political connections, and led to allegations of deliberate colonisation when Sinhala farmers were resettled within areas known to predominantly Tamil-speaking. Unsurprisingly, non-violent protests and calls for federalism amongst the Tamil polity gave way to greater militancy and a subsequent abandonment of political negotiation.

The landslide victory of JR Jayawardena in 1977 meant that the main Sinhala opposition party disappeared from parliament, leaving the Tamil United Liberation Front (TULF) as the official opposition. This gave prominence to Tamils in national politics, and nationalists used this opportunity to make racist statements under the cover of 'politics-as-usual' (Spencer 2008). The result was a hardening of sentiment on both sides; southerners were exposed to virulent anti-Tamil propaganda while Tamils developed stronger nationalist feelings and a growing conviction that separation was the only means to recognition of their rights. Many small militant groups formed in the 1970s.

In May 1983, the radical militaristic separatist group, the Liberation Tigers of Tamil Eelam (LTTE) forced political candidates to withdraw from local elections in order to weaken political engagement and consolidate the case for militant separatism. Two months later, their militant position was further strengthened by eruption of violence against Tamils in the south of the country. Known as 'Black July', Tamils in the capital and in the southern and central parts of the country were subjected to horrific attacks in which their houses and businesses were burnt. Many were brutally killed. The government was heavily implicated in the pogrom. The 1983 violence triggered definitive public support amongst the Tamils for the LTTE. The civil war that ensued lasted for over three and a half decades.

The Sri Lankan state was drawn into a second southern insurrection in the late 1980s. This youth insurrection, also orchestrated by the JVP, was driven by a potent mix of economic

and nationalist grievance stemming from unresolved economic frustrations and reactions to the presence of Indian peace keeping forces in Sri Lanka under the 1987 Indo-Lanka Accord. The period of the insurrection and the state's counterinsurgency measures which lasted from 1989 to 1991 was one of intense political violence and terror. The counterinsurgency was of unprecedented brutality; death-squads and disappearances became commonplace features. Tens of thousands were killed or disappeared, more were kidnapped and tortured, and the sight of dead bodies became a horrifyingly familiar one. The wave of violence stopped in mid 1991, with the JVP leadership either killed or in exile.

In 1994, Chandrika Kumaratunga's People's Alliance (PA) came to power promising a new political culture of rights, justice and dignity for all citizens, reviving a sense of hope to violence-weary Sri Lankans. Conservative estimates in the 1990s suggested more than 60,000 dead and over a million displaced in the war (Hasbullah 2004). Failed negotiations with the LTTE resulted in another outbreak of war. Arguments about the economic costs of war (see for example Kelegama 1998) once again shored up support for a negotiated settlement, and the PA government invited Norway to become conflict mediators in 2000. The December 2001 parliamentary elections brought the UNP back into power, leading to a situation of political 'co-habitation'. Meanwhile, a coalition of Tamil parties formed the Tamil National Alliance (TNA) and declared the LTTE to be the sole Tamil political representative. A ceasefire agreement followed in December 2001. Despite some promising starts, the peace process faltered in April 2003 and the LTTE formally withdrew from talks in June 2003. Amongst the reasons cited were the stalled delivery of agreed-upon measures, failure of the PA and the UNP to agree on a devolution strategy, a sense of lack of equity amongst negotiating parties, market reforms and donor demands that undermined conditions for the peace process (Venugopal 2010), several ceasefire violations, and the question over the return of Muslims expelled from the North-East by the LTTE in the 1990s.

The government changed again in 2004 after a series of JVP-led strikes against economic reforms pressured the President into dissolution of parliament (Venugopal 2010). Under the new government, negotiations were abandoned with the exception of post-tsunami-aid-related talks. The LTTE continued to assassinate their remaining Tamil political rivals and to forcibly recruit in the North and East. When Mahinda Rajapakse took over government in 2005, confrontations between the two groups spiralled. The government stepped up its attacks on the LTTE and by early 2007, the ceasefire was abandoned, and the country was back at war.

The return to war was accompanied by an increasingly authoritarian tone in government during 2008 and early 2009. Political criticism was labelled as inimical to national unity and to ongoing war efforts. Media freedom was threatened: critical journalists were intimidated, abducted and murdered. Civil society space too was curtailed: Non-Governmental Organisations (NGOs) and their workers were brought under greater regulation. Calls for restraint by the international community were interpreted as anti-sovereign interference. Many whose work was supported by donor funds – namely NGO workers and academics – were labelled as ‘traitors’ or ‘LTTE sympathisers’. Community surveillance was reinstituted and public reporting of suspicious political activity was encouraged once more. This was the prevailing atmosphere during the research period for this thesis.

This short summary of the politics of conflict in the Sri Lankan state suggests how the importance of the state intensified in everyday social interactions and relations over the years. Michael Roberts refers to the growing conviction amongst the polity of what constituted legitimate Sri Lankan citizens – he speaks of increasingly exclusionist language and sentiments with which nationalist and everyday discourse was conducted and shares both significant and not-so-insignificant exchanges in which such sentiments were expressed both in public politics and in the banter between colleagues and friends (1994:333-335).

With each successive stage of conflict and violence, citizens' dependence on the state to verify and validate their legitimacy (and offer them protection) increased. Especially vulnerable were those citizens whose backgrounds rendered them suspect in the eyes of the state. Kelly (2006:13) refers to the difference between citizens and subjects, describing subjects as those who are 'subjected to the administrative and coercive power of the state' with some civil rights. Because the Prevention of Terrorism Act (PTA) and the Emergency Regulations (ER) jointly abrogate some of the rights granted in the constitution, suspect citizens take on more of a subject status in Sri Lanka; they cannot speak back to the state. With the introduction of surveillance mechanisms into society that enabled people to play out a variety of local and personal grievances, the dangers of social life increased for many Sri Lankans. Monitoring by the state armed forces also meant that citizens struggled to exist in accordance to the narrowing criteria of what constituted a non-threatening or non-suspect political citizen.

People struggled to recognise and identify those who were suspect citizens on a daily basis. Informants spoke about the issues of trust around 'those who come from the north' or whose actions could be construed as 'suspicious'. Thus, the demand for conformity with prevailing notions of legitimate citizen leave little space for ambiguous or multiple identities and affiliations. Many citizens are placed in situations where they are called on to establish their legitimacy within and for the state. The means by which they did so seemed to be through 'connections', i.e. by the vouching of for 'unknown' citizens by those known to and trusted by the state. Carol Ackroyd and her colleagues have argued that this form of validation and legitimation is particularly prevalent where there is a lack of technology and resources to independently and routinely assess the status of citizens (1977). The price for not being able to adequately establish one's legitimacy is high. Informants of this study complained about the injustice of this system, which privileged the socially and politically connected – a group that was therefore powerful.

State and Legal Justice in Sri Lanka

In the opinion of many I spoke to, the systems of justice and law enforcement sorely lacked the essential tenets of justice and fairness. They lamented the ‘corruption’, the inefficacies and the ‘biases’ that they perceived in these institutions. Thomas Hansen (2005) has noted that the application of sovereignty is rarely evenly distributed in centralised states. He recognises that the use and threat of violence as a sanction is the norm in such models of sovereignty, and indeed as this study shows, the distribution of violence is crucial to the lived experiences and felt perceptions of discrimination and unfairness for many Sri Lankans. Basil Fernando notes that there are two ways of abusing the law, i.e. either by ‘making savage laws or by using civilised laws in savage ways’ (2009:vi). For the most part, Sri Lanka has had commendable laws (with some exceptions), and it has been mostly due to poor overall institutional development and implementation of law that these laws did not reach their potential to offer equal protection to all citizens of the country. He notes however that from the 1970s onwards, ‘savage’ laws began to dominate, and many legal rights and protections were gradually eroded. At present, he asserts, Sri Lanka is experiencing a situation of overwhelming lawlessness, since the rule of law is not considered important politically anymore; ‘political leaders treat the development of the rule of law as detrimental to their goals and work towards actively thwarting or subverting these for their own ends’ (2009:viii). The growth in power of the president has been accompanied by an increasing politicisation of the selection process to the higher judiciary, where recent changes to the criteria by which tenure and promotion happen have undermined the independence of the judiciary (Fernando 2009).

Kishali Pinto-Jayawardena, a prominent legal reforms activist, noted that the Sri Lankan state has failed to effectively protect the rights of citizens; on the contrary, it has acted to subvert rights and justice on a number of occasions (2005a). In particular, she has pointed

out how the state has misused its power to commit extrajudicial acts whilst continuing to deny command responsibility for such incidences. The Sri Lankan justice system then endangers rather than protects its citizens (Fernando 2009). For both Pinto-Jayawardena and Fernando, this is the most important reason for the failure to deliver justice in the country.

Equally seriously, Pinto-Jayawardena notes that the state has regularly allowed for legislation that undermines the prosecutorial and legal structures of the country by superimposing extraordinary laws, of which the ER and the PTA are the most notorious (2005). The criticism of these two pieces of legislation has been severe: particularly because actions and decisions taken by the executive in a state of emergency prevailed over most laws and could not be lawfully questioned. Under the PTA, police and security forces gained widespread arrest and detaining powers and, more problematically, confessions extracted by force and intimidation were construed as admissible evidence. The PTA has been used to enforce state control mostly against terror suspects although it has reportedly been used against others who the state saw as threatening or intimidating to its own security, for example journalists, trade unionists, the media and civil society activists. Fernando (2009:62) also notes that the practice of appointing chief justices who are sympathetic to the ruling regime, begun in 1978, had led to several chief justices having to play the game between conforming in all serious political matters with the executive president while attempting to preserve some aspects of the independent judiciary, particularly on matters apart from direct challenge to political authority. The degeneration of the judiciary has been rapid, and there are now attempts to interfere with the judiciary process itself for the purpose of defending the regime (see also ICG 2009, Pinto-Jayawardena 2010). Bench fixing, open discrimination against some judges, the sacking of many lower-rank judges who failed to conform to the views, and manipulation of the Judicial Service Commission, which is the highest authority and which controls appointments, promotions, transfers, and disciplinary

control of all judges other than those of the supreme court have become normal, as have arbitrary judgements flouting procedural equality.

As noted by Amerasinghe (1995), the majority of fundamental rights granted in the Constitution are subject to restrictions in relation to issues of national security and public order. However, the ER allowed for the wide distortion of these particularly protected constitutional rights; and indeed, the Constitution itself allows for rights to be abrogated 'in the interests of national unity and integrity, national security, national economy, public safety, public order, the protection of public health or morals, or the protection of rights and freedoms of others'. Many have alleged that the state has used these grounds unwarrantedly to impose restrictions that serve its own protection rather than that of its citizens. In several cases, the government has not been held directly responsible for the perpetration of the crimes, but rather for failing to take the necessary measures to prevent such abuses or to bring the perpetrators to justice (Asia Watch 1987). The most common approach has been to enforce measures that threaten the security and safety of some its (even law-abiding) citizens presumably for the benefit of the greater good, by referring to the state responsibility for national and public security and to its desire to bring about long-term law and order (Uyangoda 2005, Uyangoda N.D.).

Such measures are however strongly criticised as counterproductive (Amerasinghe 1995, Pinto-Jayawardena 2005a, Uyangoda 2001). Most notably, they undermine due procedures and process which serve as a check to the power of the state and ensure the liberty of the individual. The importance of the judiciary, its independence and impartiality in ensuring justice, is highlighted by the emphasis laid by many critics on the rule of law and due process. Cumaraswamy (2000) identifies two key factors for the enforcement of the rule of law: political will as well as the will and vigilance of the people. However, given the lack of political will, the overwhelming dangers who face those citizens who insist on their right to

the rule of law and the slow pace of legal justice, there seems little possibility to ensure a fair and effective justice system in the near future (Fernando 2009). Amongst the reasons that Fernando has documented for the demise of the rule of law in Sri Lanka, he includes the conflict between the repressed and ruling social groups. These conflicts were the main cause for the utterly ruthless habits in the military, police and paramilitary groups.

Under international and public pressure, the Sri Lankan government has made several overtures towards establishing the mechanisms to protect rights and justice; for example, the Convention on Torture Act was passed in 1994, the National Human Rights Commission was founded in 1996, the Corporal Punishment Act in 2005, Judicial Medical Officers were appointed, and legal safeguards were incorporated into the Code of Criminal Procedure. These measures have gone a long way towards helping the citizenry to ensure their rights are granted within the constitution, but several administrative and political weaknesses disrupt and distort the operation of these mechanisms, not least of which is the limited capacity for the National Human Rights Commission to act independently of government (Pinto-Jayawardena 2006).

Fernando (2009:ix) says that the 'commission has proven itself incapable of protecting human rights not so much because of its own failings, but because the arrangements in policing, prosecution and the judiciary deny it the possibility'. There is an ideology amongst the executive that the rule of law is not necessary for national development (Fernando, 2009:3-6). Administration of justice is relegated to a back seat of lesser importance than national security and economic growth. Indeed, one former Sri Lankan junior defence minister has been recorded in parliament as stating 'these things cannot be done (meaning, security cannot be obtained if things are done) according to law' when criticised for the massive number of disappearances in the period 1989-1990 (Fernando 2009:7). Fernando

(2005) has also noted that a large percentage of staff at the Commission lacked sufficient knowledge with regard to fundamental rights.

One of the most common observations, amongst informants to this study and other literature on the justice system of Sri Lanka, has been poor implementation of the rule of law. One informant noted that “the trend is to break the law. The politicians make the law but they never adhere to it.”⁵ Specifically, complications with regard to evidence and witnesses in legal cases and of the difficulty of securing these in an unbiased manner were noted. The many problems of obtaining evidence and securing witnesses were to do with poor police investigations, police negligence to protect witnesses (especially for poor and less connected people), unwillingness or inability of witnesses to come forward to give testimony (out of fear or because of poverty), manipulation of evidence by powerful persons, and poor treatment in the courts of witnesses who do come forward. There was a general sense that “strong people can threaten and suppress evidence, if they want” and indeed in one of the cases, an informant shared how he had paid two poorer neighbours to provide evidence on behalf of a friend who was accused of intimidation in a land dispute.⁶ Such attempts to “transform truth to lies”⁷ were seen as a key challenge to the legal system.

Within court jurisprudence, establishing the ‘facts’ of a problem is a paramount task (Rosen, 1989). Yet, the informants’ accounts suggested that which facts were presented and how they were established were to a considerable extent determined by the police as well as by the social relationships involved and various dimensions of vulnerability. State agents were instrumental in deciding the ‘credibility’ and legitimacy of its various citizens, including witnesses to a case. The choice of who was suspicious and who credible was shaped by political conditions rather than any particular ‘objective’ criteria of personal or behavioural

⁵ Interview 1.5.2

⁶ Interview 1.14.9

⁷ Interview MAN.9

history. According to some of my informants, the determination of truth and fact, so central to the functioning of law, was dependent on social validation and legitimation. Rosen's (1989) demonstration of the different influences driving the decision-making process of the judges, and in particular, the way that credibility of disputants is derived from social sources closely resembled the situation I encountered in the accounts from Sri Lanka.

Law's strategic potential is not subject to the exploitation and manipulation of disputants only but also of those in authority themselves (Moore 2001:102). Decision-makers may allude to rules and norms, but the considerable leeway they have in decision-making makes this an important area of analysis. Moore points out that in such decision-making moments, one is able to see the intricate but potentially contradictory linkages between the three modes of accounting for legal form – i.e. 'law as culture, law as domination, and law as problem-solving tool' (2001:103). She points out that 'the organisation of authority and its relation to the representation of normative ideas is a major piece of the framing, presentation, and implementation (or non-implementation) of law' (2001:103). No wonder then that 'justice' in the accounts I collected was in fact very heavily contingent on social and political circumstances. Injustice seemed built into the very process of seeking 'justice'. This finding helped to explain why people's experiences of dispute resolution and problem management appeared to be devoid of the abstract principles of justice.

State and Law Enforcement

Particularly strikingly, the police appeared central to the problem management process. Even formal agents of dispute management such as the local state officials or local politicians drew on the enforcing (and intimidating) potential of the police. Despite the predominant focus on the maintenance of order, the role of law enforcement – especially that of the police – is poorly examined in many studies of justice. This is in spite of definitions

of law having largely taken into account the issue of force in addition to that of obligation and of incentive (Moore 1969). In his study on the nature of civil-police relations in one district of Sri Lanka, Laksiri Fernando examines the prevailing structure of the police and its statutory position within the Ministry of Defence (2005). He notes that years of conflict have distorted police service towards the security of the state rather than that of citizens. Other studies confirm the allegations in this research that police tend to operate with high levels of corruption, bias and political influence (Perera-Mubarak 2012). The rate of successful investigation and prosecution of crimes under the Penal Code is now only around 4 per cent and, despite extensive evidence to the contrary, hardly any prosecutions of human rights abuses (Fernando 2009).

When questioned about these allegations, police officials stated the weaknesses of their service stem from poor salary levels, lack of adequate personnel, and the immense work pressure of police service. Fernando however raises issues of police culture, the nature of police training and poor supervision (2005). Reasons may be found in the nature of the state, the system of governance, the constitution of the police service, and the corrupt influences of political society. Another survey conducted by Transparency International Sri Lanka (2006), reported several causes for difficulties in ensuring the maintenance of law and order; lack of resources, training and support from higher ranking officials, negative attitudes of the public, and high levels of political influence.

In the accounts presented here, the police were present and highly active both in the dispute settlement and, as mentioned earlier, within the legal world. They were instrumental as mediators themselves, utilised by other state agents and community figures as a source of authority and intimidation. Furthermore, they were dominant figures in securing evidence and conducting investigations – key processes on which the court procedure and arguments depend. For this reason, most informants were very careful not to antagonise the police, and

alluded to incidences of harassment, falsification of evidence, and the threatening of witnesses. In talking about the articulation of interests in dispute settlement, Moore refers to the way in which individuals are forced to 'accept (the) interested decisions' of organisational structures or internal political alliances (1977:186).

Jauregui (2009) offers an insightful alternative in her study of everyday practices of the police in North India, one of the few if not the only anthropological study on the subject in South Asia. She suggests that, despite such widespread perceptions of a corrupt police force and high politicisation of its bureaucracy, these practices are in fact 'the pragmatically justified means of expressing agency and producing security and order' (2009:1). In her version, police interact with one another and with the public to produce these practices and whilst they do so often with underlying elements of coercion and violence, in a large proportion of cases citizens equally solicit and utilise these practices when needed. She discounts a view of police conduct as disorderly or corrupt rather seeing it as 'an intelligible complex of security and order production' (2009:1). In addition, the presence of the politicians is not, in her opinion, an aberration of the modern bureaucracy; she points to Weber's acknowledgement that ministers and presidents legitimately occupy the top echelon of bureaucratic structures, bringing in a non-bureaucratic element of influence, which Jauregui identifies as the political. She describes how the police themselves are not always empowered, having instead to take their cue from either their superiors at work or from other powerful figure in politics or the community.

The primacy of the state – in the form of state agents such as politicians and the police – posed particular risk when people were identified by the state as less credible or respectable or worse, as a threat to the state. Police officials would have to take a risk in determining the status of these individuals and were liable to being punished themselves if they got it wrong. The accounts demonstrated the centrality of state dominance in directing and enforcing

outcomes. These appeared to take place through the seemingly legitimate avenues of coercion, violence and discretion available to the police and other security forces as well as in the illegitimate avenues of false evidence, torture and negligence of duty.

In this mix, it was impossible to overlook the significance of social relations as a means of mediating access to justice or as a means of establishing credibility and legitimacy in the eyes of the state. The 'right' social connections helped people achieve the particular outcomes they wanted in relation to a dispute or problem – and in some cases even protect them from the excesses of state coercion and violence. In the course of analysing this material, this thesis has come to be about the particularly complicated relationships between people in society, and that of local society to state.

This thesis contains eight chapters in all. Following the introduction in chapter one, I introduce the methodology of study and introduce the reader to the key sites in the next chapter. I also provide a brief overview of the data obtained from the study. In chapter three, I attempt to locate the problems and disputes people present within their social, political and historical context. I conclude the chapter by highlighting two issues; a) the micro-politics driving these encounters and b) the macro-politics in which they are situated. I hope to show how problems are constructed within and as a result of the socio-political context changes and that their outcomes are contingent to a large extent on prevailing politics.

In chapter four, I examine the processes of problem management and dispute resolution. I look in turn at each of the most prominent actors engaged in dispute settlement and problem management in each site. I point out that the authority to negotiate these problems and enforce a resolution correlates to social status, access to resources and the changing context.

In chapter five, I continue with the theme of violence by the police. I point out the capacities of violence for exercising authority or maintaining order. I describe the role of the police in community-level dispute resolution/problem management and in the legal world. The involvement of the police in problem management and dispute resolution makes it an intensely political and sometimes violent affair.

In chapter six, I consider the atmosphere of increased vigilance and surveillance in the three sites in relation to the armed conflict in the North of the country at the time of the study. Using three stories from the field, I note how the combination of vigilance and suspicion tended to render categories of people potentially suspicious. The dynamics of community surveillance problematized everyday conduct, affiliation and association and open up the possibility for opportunistic violence. I examine how the expansion of the state into legitimising its citizens and marking out who is acceptable increased people's inability to tolerate uncertainty and ambiguity within their own identities, relationships and society, shrinking the space for unconventionality and plurality. I refer to how the Sri Lankan state changed the criteria for the category of suspicious persons. Through this mechanism, the state required people to keep legitimising themselves and to take part in ascertaining the status of others. Because the state is important in determining 'who' someone is, this serves to preserve and strengthen the power of the state.

In chapter seven, I focus on the importance of 'connections' as a means of establishing a credible identity and securing protection. The burden of having and activating such connections in a time of crisis and need lie with the family or individuals concerned. I suggest that a person's or family's network of effective 'connections' mark the fault-lines of their access to resources and forms of social protection, both representing forms of power but the latter being of particular importance in a climate of suspicion and of political change. I use the concept of the 'state' as part of the social world to point out that those who make up

the state (i.e. the police) in this study are themselves embedded in networks and connections, revealing the multiplicity of the state actor.

In chapter eight where I conclude the thesis, I provide an overview of the key findings. I conclude the thesis by looking at the practical implications of my analyses for the concepts of state, society and justice. I also consider the implications of prevalent low-level small-scale violence for the current failures to redress grievances and injustice with regard to the experience of large-scale violence in Sri Lanka. I end by putting forward some further questions for research and reflecting on a possible path for reforms of justice in Sri Lanka and the possibility for a future transitional justice process geared optimistically towards a sense of 'justice for all'.

Chapter 2 Methodology, Place and Preliminary Data

Three distinct strands form the material I use here. The first is a set of narrative interviews conducted as part of a consultative research study in three sites in Sri Lanka. This study, conducted at the behest of The Asia Foundation, provided the bulk of the case studies I use to demonstrate people's experiences of local dispute settlement and problem management. The second is a series of in-depth interviews conducted with influential Sri Lankan advocates and professionals who lobby on different issues related to human rights and justice. These provided me with key accounts of the challenges of working for a fairer and more just state and society in Sri Lanka, including further cases of what works and how. The third strand of information is derived from my observations and experiences of work, life and research in Sri Lanka over the past ten years. In this chapter I provide some background to the collection of the first two sets of interviews, and I provide a description of the three sites in which the research was done.

I had returned to Sri Lanka in July of 2007, but circumstances had led me to being grounded in Colombo for longer periods of time than I had either anticipated or wanted; teaching duties at the University of Colombo and a change in family responsibilities limited how long I could be away from the city. By the end of the year I still remained unsure how best to combine these new professional and personal commitments with my role as a student carrying out fieldwork. Concerned with avoiding an extractive research process (Cockburn 1998, Smith 1999), I was reluctant to intermittently show up in a village and start asking questions about conflicts and disputes. Aware of ethical problems about stirring up difficult issues for people and leaving them without any opportunity for clarification or help, I was keen to link my own research efforts to an ongoing programme so as to ensure follow-up.

Therefore, when the manager of The Asia Foundation's Access to Justice Programme asked whether I would be interested in a study they were planning on the topic of legal empowerment, I was rather relieved and accepted the offer. The Asia Foundation (TAF) kindly agreed that data generated from the research could be used for my dissertation; the formal research report that I would also provide would inform their programming interventions. In order to minimise any expectations I might raise within the field-sites with regard to material assistance, I was to clarify my university affiliations and stress that the supporting research team consisted of recent university graduates not linked to the ongoing project activities. This helped to ensure our independence from TAF and the partner organisations, although it was made clear to the informants that the research was being conducted on the behalf of these organisations and that I hoped to utilise the data for my doctoral thesis. Not unexpectedly, during the fieldwork we benefited from the goodwill and reputation that universities tend to have in rural Sri Lanka. It demarcated us from the non-governmental sector which in the prevailing political atmosphere at the time was becoming increasingly viewed with hostility.

Background to the Study

The Asia Foundation's interest in this topic was a result of their funding and supporting a number of NGOs in the development of local 'committees or groups' for a leadership role in conflict and dispute resolution within communities. The Foundation was keen to study the potential of its work for the process of 'legal empowerment', a relatively recent concept that pushes the legal aspects of development work beyond the promotion of rule of law and legal literacy or the provision of legal aid and services (ADB 2005, Golub 2003). The concept encompasses a 'broad understanding of where and how justice takes place' whether within the legal/judicial system, the community or the home (Rudge & Jayasundere 2007:4). The objective of the research study contracted by The Asia Foundation was to document and

analyse some of their initiatives in order to derive a community-driven conceptualisation of legal empowerment.

At a workshop in late 2007 hosted by TAF, their interest in such a study and its overlap with my own research agenda was expressed to the participants, all of whom were representatives from partner organisations to the Foundation. I then followed up with those organisations which expressed an interest and willingness to become part of the study. Three partner organisations were selected for their diversity in intervention approach as well as for their established experience in legal and rights education and activism; namely the Siyath Foundation, the Kundasala Community Development Fund (KCDF) and the Community Trust Fund (CTF). This thesis (and indeed the research I undertook on behalf of TAF) was not intended as a direct commentary or evaluation of their programmatic activities.

The organisations worked in a number of different areas but three locations – the southern coastal zone, the central highlands and the northwest dry zone – were chosen because of their different social, economic and ethnic compositions. The decision regarding specific sites within these locations was left to the judgement of the participating organisations, namely the head of organisation who then directed me to a staff member in the selected site. These decisions of ‘site’ were based on considerations such as where were there ‘effective and active’ local committees or groups and on practical constraints such as staff availability, field conditions and convenient access. The committees or groups mentioned here were those which the partner organisations provided support to conduct the legal empowerment/dispute settlement initiatives. I shall now briefly outline the organisations and these local groups.

Siyath Foundation is an organisation focused on supporting income generation amongst women in the coir-making industry along the southern coastal zones of Sri Lanka. It helps women coir workers organise themselves into loosely formed cooperatives. These

cooperatives help to distribute work evenly, ensure a ready market for coir products and negotiate the pricing of coir and coir products. The initiative is designed to help women and their families get out of 'bonded labour' to local tradesmen, the mudalalis. Siyath Foundation's close and long-term relationship to its clients brought them up close with the many social and family disputes of the day, gradually being drawn into a mediatory role. Subsequently, Siyath together with support from TAF, began to provide opportunities for women from the cooperatives to participate in leadership training, rights awareness programmes, and mediation skills training as well as to link them up with appropriate local officials.

Siyath Foundation's aim was to ensure 'women in the villages could resolve issues of rights violations and other disputes among themselves or by taking them to relevant external points such as the police, government officers or courts' (TAF 2007). Equipped with relevant knowledge and skills, the cooperative committees began to respond to some of the dominant issues, most notably the distribution of post-tsunami aid and in several efforts to curb the prevalence of domestic violence and of drug and alcohol abuse. The cooperatives reported a decrease in the reporting of domestic violence (as women and partners become aware of legal protection for women experiencing domestic violence) and an increased ability to seek entitlements from government officials or stand up to an aggressive or indifferent official.

The Kundasala Community Development Fund (KCDF) worked in the central highlands of the country; and its work is formulated within the framework of promoting ethnic harmony and social justice, prompted by several instances of violence between Sinhala and Tamil communities of the region and recognition of widespread deprivation of Tamil families in the tea estates. KCDF has worked with influential people in the communities, setting up peace committees whose members carry out the two prongs of its vision – bringing people from different communities together and improving community infrastructure and services,

including the facilitation of income generation activities and savings groups. In addition, the committees help individuals and families who suffer from rights violations, extreme hardship or poverty, or from structural vulnerabilities. For example, several of the Tamil families find themselves without adequate national identification documents when they have to move out following the closure of the estates in which they once worked. This leaves them – along with the Tamil community in general – vulnerable to suspicion and detention by the police. Many of these families who are forced to leave the estates also struggle to find work, access health and education services and are vulnerable to exploitation. The peace awareness committees support these families on a case-by-case basis and appeal on their behalf to the relevant authorities to furnish them with identity documents, welfare assistance or other necessary amenities.

The peace awareness committees are also involved in the resolution and containment of disputes that occur within the communities they serve, especially those with inter-ethnic dimensions. The committees constitute of committed representatives from different communities and the members seek to calm down tensions, bring people together or raise the appeal for restraint following an incident with the potential to trigger communal violence. Recently some of the committees have also undertaken surveillance duties, under a directive from the police, to ensure that communities are free from LTTE influence. This involves monitoring who enters and leaves the village, whether these movements have been authorised by appropriate government officials, and noting (and reporting) suspicious visitors to the areas.

KCDF provided paralegal training to the committee members and have worked to raise levels of rights awareness amongst them, with support from The Asia Foundation. Because of the particularly deprived conditions of the communities they serve, KCDF and the committees paid special attention to the promotion of awareness of social and economic

rights. Their efforts had, according to the committee members and many of the informants, been rather helpful – stalling many potential conflicts, reducing domestic violence, promoting school attendance amongst poor children, and improving community resources such as crèches and piped water supply.

The third organisation, the Community Trust Fund (CTF) ⁸, began in 1993 as a relief initiative for Muslims who were forcibly expelled by the LTTE from the north and who settled in the Puttalam district. The organisation then diversified into community development activities and started work in several conflict-affected districts. Their main aim has been to improve the quality of life for displaced families, with a special emphasis on the protection of rights for displaced persons and communities. They have worked for re-issuance of lost identity documents such as ID cards or birth certificates, promoted community organisation, and supported access to legal services. Like the other two organisations of this study, CTF also engaged in promoting income generation activities for poor families.

CTF supported the establishment of women's associations and citizens' committees and, in Muslim communities, facilitated the revival of the local mosque trust board, a long-standing – sometimes inactive – instrument for local mosque management. Mosque trust boards were especially encouraged in their role as mediators of local disputes because of their perceived legitimacy within the Muslim communities. These disputes and conflicts usually ranged

⁸ I would like to note, with sadness, the disappearance and murder of Mr Pattini Razeek, the Managing Trustee of CTF and a well-regarded human rights activist, in February 2010. In October 2010, Minister Bathiudeen's personal secretary publicly stated Mr Razeek was being held by the Ministry of Defence. His murdered body was discovered in July 2011. The details of the case can be read online (see www.groundviews.org and www.humanrights.asia). It is alleged that the police failed to properly investigate the case despite several leads because the suspects were close aides of Minister Bathiudeen. They subsequently failed to provide the necessary reports and evidence to the courts delaying the case once the body was discovered. The suspect who stated he killed him said he was punishing Mr Razeek for supporting the LTTE but had not intended to kill him. There is also a land dispute between Mr Razeek's family and that of another family, members of whom have been also allegedly implicated in his killing. It is unlikely that his disappearance and murder (like many other, but less high-profile, cases) will be solved satisfactorily nor the perpetrators of this crime brought to justice.

from allegations of infidelity or pre-marital sex to financial disputes over loans and other terms of agreement. However, not infrequently, the conflicts were between local families from Puttalam and those displaced from the north; in these circumstances the role of the mosque trust boards were crucial to manage and contain the conflict especially through the involvement of the Puttalam Grand Mosque which was seen as an overarching authority over all Muslim families in the district. When local board members sought additional help, CTF linked them the relevant authorities or occasionally provided access to training opportunities. CTF sought to sensitise the mosque board members on issues of equity as well as on conflict mediation and negotiation skills. CTF was credited with much support and help by the informants. The organisation was mentioned as a crucial last resort for families in distress, and equally it was cited as a key resource in improving the conditions of displaced families. Women noted that CTF had helped raise awareness on issues regarding women's education and employment and on women's rights in general.

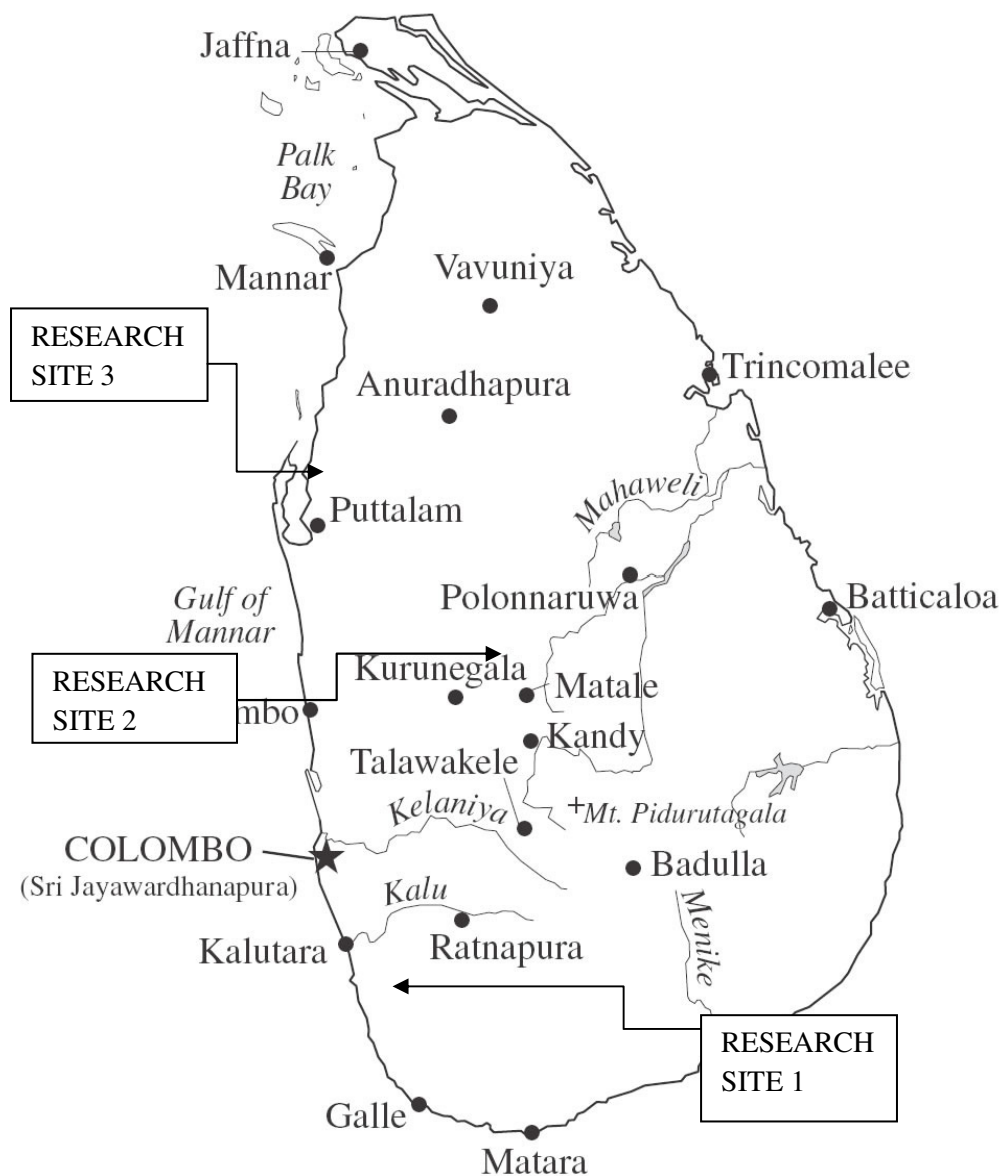
These three organisations – located in different parts of the country – were responsible for facilitating my access to the specific sites of research. I am indebted to them for their willingness to help organise our accommodation in the different sites, and introduce us to the 'local groups' through whom we gained access – and acceptance – in the selected locations to conduct our interviews.

The Three Sites of Research

Prior to the field-work, I had visited the three locations selected for the study only briefly. I was an occasional visitor to the Southern coastal areas and to the Hill-Country tea estates on short vacations and had visited the northwest of Sri Lanka only two times to conduct a brief consultancy. The three sites were located on the island's southern coast, its central highlands, and on the north-western coast. The first site is located a few kilometres inland

from a picturesque Southern coastal village in Galle District; the second is a tea estate set in the vicinity of a long-established Hill-Country town in the Kandy District; and the third is one of the many long-established camps for displaced persons situated close to Puttalam town on the North West coast of Sri Lanka. The geographical spread of these locations meant that the informants for this set of interviews were from an ethnically mixed group. The map below provides a rough approximation of the three locations.

Figure 1: Map of Sri Lanka



Source: www.miramatours.com

Rakmulla and Mahagoda: the two Southern sites⁹

The two villages in the south – Rakmulla and Mahagoda – were exclusively Sinhalese, the dominant ethnic majority forming almost three-quarters of Sri Lanka's 20-million-strong population. The Sinhalese speaks Sinhala (described as 'an Indo-European language with North Indian roots') and are primarily Theravada Buddhist in religion, although there are considerable numbers of Sinhala Christians from conversions during colonial rule in Sri Lanka (McGilvray 2008:7). The two villages were located next to each other two kilometres north of Galle along the coast; and the traditional economic activities were limestone quarrying and coir-making in Rakmulla and various forms of small-business trade, particularly tea-packing, in Mahagoda. The last was a bit of a surprise as I had associated tea-related economic activities only with central Sri Lanka, but it appeared that Mahagoda was not too far away from the low-country tea producing region. These two villages had been affected by the 2004 December tsunami and had received considerable aid. The bleakness of the emerging economic situation of the post-tsunami-aid context was one of the major concerns in the area at the time of the study.

The coir industry of Rakmulla was based on one of the by-products of coconuts; coir was woven from the fibre found in the outer husks of coconuts and the yarn used to make products such as rope, fishing nets, brushes and brooms. The coir-industry expanded significantly in the late 19th century when, under British rule, commercial plantations were encouraged resulting in a number of large-scale coconut plantations that stretched along large tracts of the southern coast. It was amongst these communities that coir-making and the production of coir products developed as a small but stable economy (For more detailed

⁹ I have changed the names of the villages to retain anonymity as requested by some of the informants.

accounts of colonial economic policies and their socio-political impacts, see Jayawardena 2001, Roberts 1982, Rogers 1987, de Silva 2005).

Traditionally of the low Hinna (washer) caste, I was told that as much as 90% of Rakmulla became coir-makers during this period of time. Coir-making was now primarily women's work. A small-cottage industry, it was not a high-earning activity at the best of times, and coir-workers supplemented their income through multiple income sources. Over the years, coir-making remained the primary fall-back economic option of the village but its scope was minified by the arrival of similar products in plastic, against the durability and price of which the coir-workers could not hope to compete. A strong awareness of shrinking economic opportunity permeated the accounts from the Rakmulla coir-workers.

With the growth of urban centres along the southern coast, villages such as Rakmulla had also become popular sites for all manner of subcontracted work such as the production of matches or lantern-making. The work was contracted by tradesmen and others from surrounding villages. These local entrepreneurs, or mudalalis, developed a patronage system still strongly evident in the first decade of the twenty-first century. In the case of Rakmulla for example, the mudalalis had held the upper-hand with regard to the coir- and other cottage industries. They supplied the coir-workers with coir from the coir-factories and purchased the coir-yarn and coir-products from women workers. This meant that the women were beholden to the prices quoted by the mudalalis, even if these were below-market rates. The women were frequently in debt to these and other tradesmen of the area, and without access to other markets or capital, they were a ready source of low-cost labour for the local tradesmen. Many of the mudalalis to whom coir-workers were indebted resided in the adjoining village of Mahagoda.

Mahagoda was certainly the economically and socially better off village of the two. Its comparatively well-built houses were clearly demarcated with well-tended fencing, high

stone walls and ornately designed gates. It had a set of well laid roads and streetlights, and being on higher ground, properties had been less affected by the tsunami. The people we encountered differed too from those in Rakmulla. For instance, there were a high proportion of teachers, public sector employees, graduates, business owners, and private sector employees in Mahagoda. Some of the residents in Mahagoda referred to their village by caste, describing it as being composed primarily of people from the Salagama (cinnamon peeler) caste. The Salagama caste is mentioned by Roberts (1982) as having gained higher social and economic status during the colonial and post-colonial periods (also see Jayawardena 2001 for further descriptions of how caste associations were transcended during these times). In contrast to the relative grandeur of Mahagoda, Rakmulla was laid about a single narrow gravel road with no street-lighting. The houses on either side of the road were small structures in open compounds. Small paths led off this road to other even smaller houses. There were large areas of empty land with dense undergrowth, many of which belonged to Mahagoda, rather than Rakmulla, residents.

Knowledge of such hardship and deprivation amongst southern coastal villages such as Rakmulla and its surrounds had prompted the arrival, in 1996, of Siyath Foundation through which I had sought access to the village. Siyath Foundation began this work in several areas in the south almost a decade ago, and the challenges for women coir-workers in mobilising themselves have been well-documented (see for example Carla Risseuw 1988). The introduction of the coir-worker cooperatives by the organisation disrupted the patronage relationships which had existed between the coir-workers and the local mudalalis for the past century. Their success in challenging the mudalalis' dominance was evident in the number of threats endured by the staff of the organisation and the women coir-workers themselves in the initial years.

Overturning the entrenched dominance of the mudalalis had however not been entirely successful. Mudalalis were objects of deference and commanded considerable influence in the community (see Alexander 1995). In their consolidation of power over the last century, such entrepreneurs had invested in land and education for their children, who went on to occupy influential positions within the local and district state administrative officers (Alexander 1995, Roberts 1982). This made the mudalalis a locally powerful group, whose strong links to the state bolstered their positions. To compound Rakmulla's subordinate position to Mahagoda, the Salagama caste (to which most villagers of the latter site belonged) had traditionally been exclusively served by the Hinna caste. These dynamics had a discernible impact on disputes; a number of the problems (and its management) crossed the village boundaries and it was mainly for this reason, that we too crossed the village boundary from Rakmulla into Mahagoda in collecting the accounts of small-scale dispute resolution. From the 40 interviews we conducted in the south of Sri Lanka, 20 came from each of these two villages.

Mahamalwatte and Podimalwatte: the two sites of the central highlands

It was a month after the visit to the first site that we travelled to the second. The second field-site was situated at an altitude of 1000m and was a dramatically different setting from the sunny coastal villages of the first. The higher regions of Kandy district formed the heart of Sri Lankan high country, where tea was extensively grown as a commercial crop. The GN of the area, with whom we had communicated to organise the visit, had arranged accommodation in an empty house, the owners of which lived in Colombo and visited only occasionally. The two locations where we conducted the interviews were Mahamalwatte, a small village located amidst the vast tea estates that dominated the central highlands, and Podimalwatte, a small community adjoining Mahamalwatte on one of these estates. On the first day of our visit, the GN had called a meeting at the local community hall where he had,

with ceremony, introduced us to a number of key community figures. This was done, he later informed me, to legitimise our presence and ensure that those in positions of authority were aware of our visit and interaction with the people of the villages. Cultivation, semi-skilled or unskilled labour, and small-business trade were the primary sources of work in Mahamalwatte and work on the estate, i.e. tea-plucking, pruning bushes, clearing lands, in Podimalwatte. Both places were ethnically mixed – with a higher proportion of Sinhalese in the former and of Tamils in the latter. Even though Tamils formed the largest minority group in Sri Lanka (at 18 percent) and made up the greater part of the population in the north and east of the island, the Hill Country Tamils (at approximately 6 percent) were a socially distinct group from the Sri Lankan Tamils (12 percent) who had been in the country for numerous generations. The third ethnic group in this location, the Muslims, accounted for a very small proportion of the inhabitants. The daily wage of a plantation worker is little more than a dollar and there were seasonal variations in pay so families were perpetually in debt to shop-owners, estate management or private money lenders. The workers were subject to harsh disciplinary and supervisory measures, and moreover the terms of employment and daily work were often disadvantageous for the labourers (see Hollup 1994). Till quite recently the plantation communities held the highest statistics for illiteracy, mortality and morbidity in Sri Lanka (Little 1999, see Rogers 1987 and also de Silva 2005). These appalling statistics caused national embarrassment and forced the state to focus on improving plantation community welfare since the 1990s. Recent trends show improvements in their well-being (DCS 2009/10).

The Hill Country Tamils were the descendants of indentured labour from South India brought by the British in the 19th and the 20th centuries, commonly referred to as ‘Indian Tamils’. Being migrant menial labour marked them as socially, economically and politically alien and inferior (Sinnathamby 2004, Little 1999). Under the Donoughmore Constitution of 1931, they had limited voting rights; but nationalist sentiment, spurred by strong political

representation of the group in Parliament, led to measures that disenfranchised the majority of Estate Tamils by the Citizen Act 18 of 1948 (Hollup 1994). A few were granted citizenship by legislation brought in by 1949, but most remained stateless. The status of these Tamils was a controversial issue between the Indian and Sri Lankan governments, and several attempts were made to find a solution, resulting in over 600,000 Tamils being repatriated to India over 15 years whilst a further 375,000 were granted citizenship (Hollup 1994). In 1986, the remaining Tamils were given citizenship. Full political rights were restored in 1998 but registration was slow. During the 1980s and 1990s, large numbers of Estate Tamils were detained under the Prevention of Terrorism Act, due to a lack of identity documents. Arrest remained a real likelihood for estate Tamils in the following decades as the issuance of registration documents was very slow. In fact, 5 of the accounts shared by Tamil informants from this site had to do with the detention of family members under charges of suspicion.

Tensions between the Sinhalese and Tamil communities in the central highlands are a continued point of concern. The hostilities generated by the association of estate Tamils with India and their shared linguistic connection with Sri Lankan Tamils led to violence against estate Tamils; attacks on estate Tamils took place most notably in 1977, 1981 and 1983, in which several Tamils were evicted from their homes, their line-rooms burnt, and people killed. A number of estate Tamils fled to the north and east in the aftermath of this violence (Sinnathamby 2004).

During the colonial and post-colonial period, they were provided with separate facilities for health, education, childcare and housing; these welfare measures were seen to be the responsibility of private companies rather than that of the state. Many of these measures also served to isolate and immobilise the community. They were housed in line-rooms within the estates, in which accommodation most families in Podimalwatte still remained. Built in the

late 19th century by British planters for the plantation labourers, line-rooms were as much a legacy from the colonial past as the tea estates. They constituted a low barrack-type building, divided width-wise into six, eight or twelve rooms. These buildings were situated along an intricate network of footpaths cut across the slopes. Families were assigned a room within this building, conditional to at least one member working on the plantation.

The line-rooms, to all accounts, had not changed much in the past 150 years. This was evident in the general air of dilapidation and disrepair I observed about the buildings. The walls were cracked in places, the terrace breaking up and mouldy streaks marked the walls where the roofs leaked. The confined space of the rooms meant not only that extended families, including grandparents, parents and children lived together, but also that the tasks and materials of everyday life spilled out into the shared common exterior of the buildings. Household items (such as cooking pots and pans, one-burner kerosene stoves, and children's plastic toys) were carefully stacked next to the door on the terrace outside. Cooking and washing were sometimes done out here, as were sitting in the evenings and chatting with neighbours. There were common-use latrines, sometimes in the ratio of one for five to eight families. Potted plants, pruned bushes, and rounded stones neatly sectioned the area in front of each room, marking neighbourly boundaries. These created a palpable sense of carefully negotiated space amidst fairly cramped living arrangements.

Despite the public performance of daily activities in the common outside spaces, almost all the interviews were done indoors at the invitation of the occupants. Most families had partitioned the room into two, using curtains or thin sheets of plywood. The first (smaller) area was set up for sitting with one or two plastic chairs and a small table and the second for sleeping and changing. Because windows were either small or non-existent, the interiors were almost uniformly dark. Poorer families had not divided their room. These families had meagre furniture; cooking was done indoors. One informant told us that this was because

there was sometimes so very little to cook, she felt ashamed to cook outside like the others.¹⁰

“I don’t want them to know what (little) we have to eat,” she said.

In contrast, Mahamalwatte offered spacious and private living arrangements – houses were separated from each other, generally located in its own plot of land. A large proportion of Sinhalese families cultivated or marketed vegetables as their primary means of income. Cultivators often rented their land, or sometimes planted on abandoned land. Cultivation was not without problems. Access to water for agriculture and everyday use, despite its apparent abundance in the hill country, was problematic, especially since there was competition for water with the tea estates. Typically water was diverted from streams to individual households or fields, making those who lived lower-stream dependent on the amount of water used by households higher up. Water scarcity had instigated some very serious disputes amongst families including one where an elderly man had been accidentally killed.

Mahamalwatte had incorporated upwardly mobile Tamils who had moved out of the estates, as well as Muslims and Sinhalese from elsewhere who moved into the area following the land policy reforms and new colonisation schemes in the 1970s (see Fernando). Simultaneously, a small number of impoverished Sinhalese and Muslim families from Mahamalwatte (and from other villages in the vicinity) entered estate work over the years and had been granted residency in the line-rooms. The migratory movements into and out of the estate made both Mahamalwatte and Poddimalwatte ethnically mixed places.

Apart from issues of infrastructure, accounts from Mahamalwatte revealed that life was not much more economically easier than on the estates. The vegetables were harvested and marketed two to three times a year. These were generally not enough to manage their expenses for the rest of the year, and so people borrowed money from comparatively well-

¹⁰ Interview 2.7.1

off relatives or private moneylenders. This money was repaid at the next harvest, if successful. There was little money left over from the sale of their crops to expand business, to buy better quality or different varieties of seed, or to rent additional or more arable land. Most cultivators relied on middlemen to market their goods, and the prices quoted were below cost. Unless options were found to transport and sell their own vegetables in local markets at better prices, the cycle of debt was perpetuated, forcing families to borrow again before the end of the year. Aware of their precarious financial status, many cultivators simultaneously engaged in other trade or employment, supplementing their income in a number of different ways – milk and egg production, having small grocery shops and barbershops or working in these, if they could.

None of the Tamils or Muslims interviewed in Mahamalwatte engaged in cultivation. Men worked as masons, drivers or as labourers; women offered tailoring services, prepared food for selling or laboured in the fields. Because they had some land, there was space for vehicles, tools, or a small workshop. Livestock and poultry were kept for income generation and supplementing household subsistence, although disputes sometimes arose because of cattle grazing in others' fields or on someone else's crops. These were usually settled by some form of compensation for the loss. Younger people, from all ethnic groups, were anticipating different economic opportunities. Many young Sinhalese, Tamil and Muslim youth intended to become private tutors or computer teachers in private educational establishments. Nevertheless, a large number of young people remained unemployed just as in the southern site.

Periyannagar and Kundruvillai: resettlement and local villages in the north-west district

The third site for this study comprised of the two adjacent villages of Periyannagar and Kundruvillai, on the north-western coastal region of the Puttalam district. Here, Muslims were the majority population, made up of local Muslims and a large number of Northern

Muslims forcibly evicted by the Tamil militants in the north. The local Sinhalese population was closer in number to that of the local Muslims, and until the arrival of the displaced Muslims, the ethnic proportion of this district, one of the most resource-poor areas of Sri Lanka, was considered well-balanced (Hasbullah 2001).

Our entry into Puttalam was on a hot sultry day in December 2008 and we drove first to the office of the Community Trust Fund, where the coordinator quickly directed us to pre-arranged accommodation in the middle of Puttalam town. After offloading our luggage, we were taken to the village of Periyannagar and introduced to members of the mosque trust board and of the women's committee. We were then able to set up further interviews and follow our own leads. The informants for this study were drawn only from amongst the Muslims, half of whom were Northern-displaced Muslims living in the settlement of Periyannagar, and the other half Puttalam local Muslims from the village of Kundruvillai. Fisheries and aquaculture such as shrimp fishing – and its support industries – were the main employment sectors. Salt production was well-established and Puttalam boasted some fairly large salterns. Further inland from the coast, there was a high concentration of coconut plantations as well as smaller areas of paddy cultivation and the agriculture of vegetables such as onions and chillies. Other employment opportunities included small-scale industries and trade in textiles and food.

Muslims in Sri Lanka are scattered across the island although the largest concentration of them are to be found in south urban areas of the country and a smaller but significant proportion along the eastern coast of Sri Lanka (McGilvray 2011). Muslims make up the third most prominent ethnic group in Sri Lanka, constituting 7 percent of the population. Because of their historical trading links with the southern parts of India, there are several shared traditions between the Tamils and Muslims, not least of which is that most Muslims in Sri Lanka (barring very small minorities of ethnic Sri Lankan Malays and Gujarati-

speaking Bora communities) are Tamil-speaking, although southern Muslims also speak fluent Sinhalese (Ali 1981, McGilvray 1998). During the run-up to independence aiming for separate representative status at the Legislative Council Muslim political leaders presented themselves as mixed-race descendants of Arabic and Persian traders who had arrived on the island over different centuries (Nissan & Stirrat 1990, Wickremasinghe 2006). This appeal was made against a contemporaneous attempt to assimilate Muslims into a broader Tamil identity (as Muslim Tamils) by one of the leading Tamil political figures of the time. Although tensions and prejudices had existed between Tamils and Muslims, and the Sinhalese and Muslims, historians have largely credited the group for having assimilated well into local communities whilst maintaining their separate institutions.

The Muslim community have also been known as Moors, and this non-religious ethnic identity was championed by some Muslim political leaders up until the 1970s (McGilvray 1998). It was only in the 1980s that the urgings of the Tabligh Jamaat, a voluntary movement promoting pan-Islamic identity, persuaded Sri Lankan Muslims to begin identifying themselves as one group with a shared religious interest – a trend that has intensified in response to external pan-Islamic influences and political struggle for significance at national and local levels (Ali 2003, McGilvray 2008). There exist significant regional identities amongst Muslims. Muslims in the west and south coasts of Sri Lanka were primarily commercial traders and retailers, whilst those in the east and northwest have been rice farmers or fishers. Muslims in the north of the country, much like their Tamil counterparts, were better-educated, tended towards professional occupations or were commercially well-established. In fact, the regional spread of the Muslim population and their different socio-economic interests have hindered the development of a united polity (McGilvray & Raheem 2007).

In the post-independence landscape, Muslims have chosen to conduct their politics in largely strategic terms, with the more powerful west coast Muslim leaders making accommodationist overtures towards the Sinhalese political parties and in turn receiving special privileges within the educational, employment and political fronts (Ali 1986-1987, Ali 2001, Hasbullah 2004). These rewards tended to favour the south-west Muslims more than their north-east counterparts, and when the conflict broke out between Tamils and the Sinhalese, there was little guarantee of safety for Muslims who resided in the north and east of Sri Lanka. In this context, some Muslims were persuaded to join the Tamil separatist struggles whilst others responded by developing their own political parties seeing Tamil political activism as independent of their own concerns (McGilvray 2008, Hasbullah 2004). Rifts between the Tamil militants and the Muslim community became wider in the aftermath of these events. They heightened in response to suspicions of Muslims acting as informers to the Sinhala security forces, the growing number of armed Muslim groups in the north and east, the presence of Muslim officers in the armed security forces of the government resulting finally in several murders and massacres of Muslim civilians and police officers by Tamil militants and the forced eviction of Muslims from the North by the LTTE in October 1990 (McGilvray 2008, Roberts 1994, Hasbullah 2004).

The villagers of Periyannagar were such Northern Muslims, part of the 80,000 or so Muslims who arrived in Puttalam after being ordered to leave the Northern Province. Despite the incursion of displaced residents, official Puttalam district statistics claimed not to have a predominant ethnic majority. Official population statistics have remained at 44% Muslims, 44% Sinhalese and 12% Tamils, achieved by discouraging if not preventing the displaced Muslims from registering their residence (Brun 2003). Were the displaced Muslims officially registered, Muslims would become the majority ethnic group in the district, jumping to 64% of the population of which a large proportion would be displaced Muslims. Alarm about these potential changes led to all local groups, including the Puttalam Muslims,

resisting their registration (Brun 2003). This local pressure aligned perfectly with the wishes of the central government – not to de-register the Muslims from the Northern Province and create purely Tamil provinces as the LTTE had intended when they ordered the Muslims to leave. Consequently, the displaced had resided in Puttalam for over twenty years as temporary residents.

Over time, competition increased between the local and displaced Muslims for the limited education and healthcare facilities. These limitations were the result of political struggles between the Northern and North-western provinces over allocation of resources. (See Brun 2010 for more details on the Puttalam-Jaffna provincial administration struggles over resource allocation.) Spurred on by the fishing and other restrictions, the Northern Muslims started other income-generating activities, surpassing the wealth of Puttalam Muslims in many instances. The Puttalam residents attributed their comparative prosperity to the advantages they received through their status as IDPs and not their hard work, increasing their own sense of exploitation.

The restrictions on displaced Muslims were introduced in the late 1990s in response to overt signs of over-fishing in the lagoon. Though over-fishing had coincided with the arrival of the displaced Muslims, it could also be attributed to other factors, such as the introduction of powerful longer-range fishing boats and more durable and stronger fishing equipment during the 1970s and 1980s. In addition, poor farming practices associated with the expanding shrimp industry had increased the salinity of the lagoon water and had affected fish population. In the same period, the civil war of the north and east had enforced continuous fishing throughout the southwest monsoon, a time when normally fishing would have moved northwards. The noticeable decline in the fisheries alerted broader attention and led to a number of ecological studies which recommended restrictions to the types of nets and gear used, and how many permits should be released (see, for example, Dayaratne, Linden, & De

Silva 1995). These recommended restrictions were passed onto the displaced Muslims and were used to justify limiting their fishing access.

Other restrictions on the displaced Muslims increased as well. They were not allowed on the local mosque committees nor were they allowed to join local fishing societies. As a result, the displaced built their own mosques and appointed displaced-only trust boards. In response local villages too began to revive their mosque trust boards and encouraged a legitimate role for the boards in the management of conflicts in their villages. This has been a relatively recent phenomenon, occurring only in the last five years or so. Kundruvillai, the local village bordering Periyannagar adopted a similar approach one and a half years ago. Once in function, the mosque trust boards – both in resettlement and local villages – were regarded as a key community institution and commonly targeted by non-governmental organisations for institutional strengthening and programmatic funding. Members of the trust boards had traditionally been elected by community members, and mostly consisted of older men respected for their piety, influence and moral character. Small or village-level mosques were all represented at or had links to the larger Grand Mosque in the district, in this case the Puttalam Grand Mosque.

Mosque trust boards have long been a feature of Muslim communities in Sri Lanka, primarily tasked with running mosques. However, there have been periods in which mosque trust boards became socially and politically active with varying degrees of success. Writing about mosque trust boards in the eastern coast of Sri Lanka in the 1970s, Dennis McGilvray noted that mosque trustees had earlier had ‘moral and jural authority to adjudicate during misdemeanours, marital infidelity and quarrels amongst congregation members’ and inflict punishments according to Islamic practice. But several factors – amongst them the possibility for litigation in the civil-court system, the introduction of governmentally-sanctioned Islamic magistrates known as Qazis, and the expansion of independent religious

experts in Sri Lanka – had eroded this role of the board (McGilvray 2008:277-279). The trends in this study suggests a clawing back of such authority by the Periyannagar and Kundruvillai mosque trust boards who closely monitored and regulated their communities' access to and use of external resources and sought to be of greater influence in the settlement of disputes.

Multi-sited ethnography, comparative research and an interdisciplinary approach

The choice of these three sites – and the fact of three rather than of one site – was largely a result of the objectives of the study, which I agreed to conduct for the Asia Foundation, and of the diversity of its own programming. I had originally intended to spend more time in one of these sites for my thesis in order to obtain a deeper understanding of context and process of justice-seeking in a particular locality and to carry out a more conventional form of ethnographic research. However, an initial reading of the data from the three sites – and particularly the immediate insights afforded by this comparison – impressed me with the possibility of an alternative approach to the research. Following arguments from multi-sited ethnography I have included the three sites in this study as a comparative device and have attempted to hold them simultaneously in view. This has led me, as described by Marcus (1995: 102), to 'juxtapose very different social worlds' and to examine in each 'forms of similar social phenomena' – i.e. disputing and dispute settlement. Nadai and Madaer argue that when viewed like this, the 'objects of study appear inherently fragmented and multiply situated' (2005: paragraph 20). Indeed, I have been challenged time and again to retain my focus on the shared process across the sites and on their many particularities which influenced the process. From a writing perspective, the multiplicity of place has threatened me with a document of large and unwieldy dimensions, on several occasions. This has forced me to make decisions about how much of each aspect to include in the thesis – to

provide enough information about the socio-historical specificity of each site and to allow for a thorough description of the way that the justice-seeking process works across the different sites, whilst acknowledging that the process is strongly shaped by these very specificities. Nonetheless, however much difficult and challenging it has been, a comparison such as this has been invaluable in many ways.

Particularly, it has allowed for understanding the patterns and issues of justice-seeking across different groups of Sri Lankan society. Studies related to justice in Sri Lanka have concentrated on particular issues, land rights or conflict-related human rights violations for example, or on particular ethnic or social communities. I have felt that the focus only on one group or community has tended to foreground identity rather than the underlying dynamics which drive the relationships that result in such differing outcomes for different groups – and, particularly as has been said, for the powerless of Sri Lanka. My argument, from the very beginning, has been that there is a culture of power and a type of state-citizen relationship that affects all communities in Sri Lanka, irrespective of social background and the dynamics of the ongoing conflict. This is not to say that ethnicity, social background, class, gender, and other social factors have no bearing on differential access to justice and that it is unimportant to examine these in greater detail. But rather, a dominant focus on these has obscured our vision of the social relations and practices that leads to the production of the unfair or discriminatory outcomes so deplored by many Sri Lankans. This research I believe goes some way towards correcting this oversight.

To provide a brief outline of methodology, I have utilised a comparative analysis of data from three different sites and I have chosen to collect data in the form of detailed stories from informants from these sites. The stories are about people's experiences of disputing, dispute settlement and problem management, and their proffered explanations for the particular outcomes associated with these disputes and problems. In addition to these stories,

I have supplemented my knowledge with additional interviews from selected practitioners, policymakers and academics. I have provided my reasons for choosing to explore issues of justice-seeking through the prism of disputes and problems in the previous chapter.

The construction of detailed case studies through interviewing is an acknowledged tool in both psychological and anthropological research (Atkinson, Coffey, Delamont, Lofland & Lofland 2001, Gubrium & Holstein 2007). The comparative approach, frequently deployed to effective use in social science studies, is however not very common in anthropology (see for example Sally Falk Moore 2005). She argues that, historically, anthropological comparisons were made possible through the synchronic production of different social ethnographies. The practice of comparison within a single anthropological piece of work is recent and has taken primarily the form of documenting process and observing changes across time, something that, she notes, poses a different set of challenges to those faced by earlier anthropologists. Other commentators on anthropological research methods have noted the emerging importance of networks, flows and boundaries (for example Hannerz 1997), where anthropologists trace the flow of information, people and goods across boundaries and follow relationships and linkages through various pathways. The comparisons here are made on the features of the spatial arrangements, the nature of flows, and the changes to the objects of study as they pass through various points in the network.

In this research, I have attempted a comparison both of place and of process. The main object of study linking the different sites is the justice-seeking process and the three sites are held together within the overall context of the Sri Lankan state, history and society. None of these spaces is isolated or self-contained; they are governed – to a large extent – institutionally and politically by similar forces. Additionally, as Wittel (2000) observes of networks in general, the dense connections within these sites contain many pathways that flow out from and link up to other networks and other spaces both within and outside Sri

Lanka, some of which intersect at the level of national politics or conflict dynamics for example.

The study moves between diverse spaces such as from coastal to central Sri Lanka, and from community to institutional discourses. It covers, in both a geographical and social sense, multiple terrains. Equally importantly, the methodology I have chosen to employ and the analysis which I bring to bear on the material crosses disciplinary terrains as well. My primary background is in psychology with its emphasis on individual factors, a somewhat positivistic epistemological inclination and (as Martin-Baro has pointed out) a predominantly ahistorical view of human behaviour (Martin-Baro 1994). In my time as a practitioner, I have found the limitations of these viewpoints sometimes frustrating. Indeed, the first books that I picked up on the subject of psychology and law suggested that psychological insights contributed to law from within the existing legal framework, for example by seeking to explain the social context of criminal behaviour, to illuminate the impact of psychological processes (e.g. stress, memory) on human behaviour which may help police or legal officers interact more effectively with the public, to strengthen eyewitness testimony and judicial decision-taking, or to comment on the legal considerations of mental illness and disorder (see for example Muller, Blackman & Chapman 1984). Such considerations neglect to question and explore the basic premises for the deployment and functioning of the law and the ways that human behaviour contribute to the constitutive forces of operationalising justice in society. These limitations prompted my foray into other social disciplines. With regard to understanding the links between society and the state and their role in securing justice, I was especially keen to approach the topic which, I felt, might be more suited to the concerns I had. Anthropology as I understood it, with its focus on social relations, explicit recognition of the significance of history in the formation of such relations (at least since the 1980s), and its broad understanding of cultural practices, provided an exciting complementary approach.

Nonetheless, I have not ‘shed’ my disciplinary origins entirely. The challenge that I have set myself has been to retain a focus simultaneously on the internal dynamics of the person, the social person, and the person-in-a-broader-context of history, time and space. In addition, I was also interested in the structures and systems of society, and its relations of power. This has required ‘the constant recognition of the interplay between different levels of analysis – the political, the social, the institutional, and the personal’ (Salih & Samarasinghe 2006:10), which I hope is reflected in my method of analysis.

Conducting the research, and writing and analysing the material for this thesis from this interdisciplinary perspective has been an exciting, enlightening and very challenging time. I have sometimes felt ‘caught’ between the two demands of the two disciplines and more often between the two epistemological approaches. This has required me to adopt a more rigorous and self-critical method in the way I use and present evidence – something which I believe has enriched, rather than constrained, the analysis. The third and fourth chapters are very much based on the systematic analysis of data whilst in the fifth to the seventh chapters I examine the particularities of the themes and stories in greater detail – to look at them through ‘the discipline of context’, to coin a phrase by Thompson (1972).

One more note: a primary consideration on my return to Sri Lanka was to locate my research outside the areas of active armed conflict. This was mainly because I was interested in exploring people’s sense and experience of justice in a context where everyday experience was not inflected with residue from the ongoing conflict. I hope the approach adopted here takes the issues of justice beyond the conflict situation and situate them more recognisably within everyday relations and power dynamics of social life. The comparative approach affords just such a glimpse into the quest for justice.

As I discovered, the conflict is never far enough in Sri Lanka. In all three sites, it was clear that the operations of problem management and dispute resolution were affected by the

political context, in which the dynamics of the conflict featured strongly. The ongoing conflict context was a source of problems for some of the informants. Quite a few of them shared how consideration of conflict factors influenced their sense of power and vulnerability in a problem or dispute situation. The myriad impacts of the prolonged conflict on the citizen-state relationship, and on the relationships between people were undeniable. This acknowledgement has forced the study to become much more explicitly about the conflict, than I had previously (perhaps naively) intended or expected it to be. At the same time, this unexpected presence of conflict dynamics illuminates how the violence of the conflict come to inhabit the everyday life of Sri Lankans, and how its dynamics are played out in the way that justice is sought and is available. The multifarious nature of the state, and related to this, its tendency to be different things to different people especially under the conflict conditions, became quite starkly apparent. Because the outcomes to these events were tied so very closely to the state, justice too took on a multi-sided nature – and one in which the state and the dynamics of conflict were directly implicated.

The Process of Field-work and Data Collection

It was October 2008 when we started collecting narratives about people's experiences of justice for the Asia Foundation study. 12 research assistants were recruited, 6 Sinhala-speaking and 6 Tamil-speaking. I can understand everyday Sinhalese and converse hesitatingly. Conducting an entire interview in Sinhala without language support, however, was an impossible task and I could not speak Tamil at all. Hence, I was to be assisted in the interviews by translators. The interviews took over four months, roughly one site each month. 110 formal interviews were carried out in all, 35 of which I personally did together with a translator and the rest by the research assistants. The total consisted of 40 interviews from the Southern villages, 40 interviews from the Deltota area and 30 interviews from the Puttalam region (see Table 1 for a breakdown of gender, ethnicity and age). Staff from the

partner organisation accompanied us to the village on the first day and introduced us to members from the local groups, i.e. the committees involved in dispute resolution at the community level. The first sets of interviews were mostly with these people, after which we disbursed into different parts of the village. The interviews were conducted in pairs, with one carrying on the discussion and the other transcribing and making notes. Where consent was obtained the interviews were also taped and transcribed to check for quality of interviewing and the write-up.

The choice of dispute or problem was left to the informant. During the interviews, attention was paid to constructing a detailed narrative comprising of the actors, institutions, responses, strategies, processes and influential factors. Details about the background of the informant, notes on their relationships with other people in that village or elsewhere and personal observations about the person were also made. The interviews were generally between one and a half to two and a half hours. (For an outline of the interview schedule, see Annex A). The interviews were subsequently transcribed by the researchers and translated from Sinhala or Tamil into English. During my visits to the different sites, I took notes and kept records of my conversations with people other than those who were formally interviewed especially where I felt they provided useful insights into 'how things happened'. In each of these sites, informants were asked to give an account of two problems or disputes which they had experienced, one of which they were satisfied with the outcome and the other of which they were not.

The 110 informants of this study provided accounts detailing a total of 325 disputes and problems in all. These narratives constitute the first strand of material for this thesis. The quantitative data that I have presented comes from the systematic analysis of the narratives, for example, categories of disputes and problems and rates of intervention by different institutional actors. I have found these to be useful to confirm or discount my own initial

readings of the data. For example, I was initially struck by the prevalence of the police in the settlement of disputes in the accounts; however my systematic analysis was helpful in differentiating the rates of involvement of the police in the three different sites. This not only helped me pay attention to the differing roles of the police in these places but also prompted me to consider the implications of this on the relationship between state and citizens from minority groups. Such findings have influenced the themes I have chosen to explore in the later parts of this thesis.

Table 1: Demographic breakdown of informants by site

			Galle	Puttalam	Kandy
	N	%			
Total	110		40	30	40
Gender					
Women	61	55.5	30	14	17
Men	49	44.5	10	16	23
Age group					
18-29 years	24	21.8	6	8	10
30-50 years	52	47.3	17	15	20
51-70 years	34	30.9	17	7	10
Ethnicity					
Sinhalese	49	44.5	40	0	9
Tamil	30	27.3	0	2	28
Muslim	31	28.2	0	28	3

The largest proportion of the 325 disputes was to do with contested claims over land and access to common water resources, while the second largest were consequences arising from the abuse of illicit liquor (kasippu) and the drug trade. Both these issues were associated with violence within and between families, leading on more than one occasion to murder or serious assault and imprisonment. The third most frequently discussed problem was to do

with poverty and economic hardship, that is, people talked about specific difficulties of managing (or trying to manage) without adequate food and housing, being unable to send children to school, the hopeless business of seeking work, having to take loans, the crippling effect of perpetual debt, and the condemnation to living a life of subsistence and stagnation. Accounts of assault and violence, apart from those mentioned in relation to land and water disputes and alcohol or drug consumption, formed the fourth most widely discussed problem. These were to do with disagreements with neighbours, fights between children, and personal hostilities arising from perceived or actual slights. A smaller proportion of problems were to do with accessing state services and official documents or permits. Marital disputes and disagreements made up a close fifth of the problems. There were variations in frequency across the three sites. For example, marital disputes were the largest category of problems in Puttalam whilst land disputes were the most common in the south.

The categorisation is based on problems that informants fore-grounded in their accounts. Nonetheless, the backdrop in all three sites shared some common themes. All shared, for example, an imperative for economic migration of men and women to urban centres or abroad. However whilst migration added to the plethora of problems that people experienced, there were few other economic opportunities which provided such a strong possibility of social mobility, financial security or of escaping oppressive and stigmatising family situations. The accounts from all sites were peppered with references to chronic unemployment or under-employment of partners, parents and adolescent or adult children. The economies of each site were evidently failing to provide viable jobs for families to fulfil their needs and aspirations. Another prevalent theme was that of hostilities between the different social groups in each site. Caste, class and religion tended to divide the southern communities, ethnicity and regional differences the central and north-western communities. Political affiliations caused tensions amongst communities in all three sites. These issues are presented in greater detail in Chapters 3 and 4.

After having first familiarised myself with the accounts, I then did a quantitative analysis of the material, totalling the types of disputes and types of actors across the 3 sites. I believed this would help me clarify my initial impressions of the data – for example that violence was a common experience or that the police are a frequent mediator. Once the main themes were identified, the major part of my analytical work was qualitative in nature. The transcribed and translated interviews were subjected to a content analysis. It consisted of closely reading the stories for information on the nature of relations, the meanings attached to events processes and outcomes, the emotions (where observed and recorded) that accompanied the narrative, and the description of interactions, exchanges and factors which (according to the informants) shaped the particular outcomes to their disputes and problems.

Table 2: Most common disputes by type in the three sites (see Annex B for full table)

Total	Type of Dispute	District	Total	Outcome		
				<i>Successful/ Satisfactorily resolved</i>	<i>Unsuccessful/ Not satisfactorily resolved</i>	<i>Undecided/ Still ongoing in some form</i>
36	Land disputes	Kandy	17	9	8	0
		Puttalam	4	3	1	0
		Galle	15	9	3	3
31	Alcoholism/ drug addiction	Kandy	14	7	7	0
		Puttalam	4	3	1	0
		Galle	13	2	11	0
29	Poverty and debt	Kandy	14	5	9	0
		Puttalam	4	0	3	1
		Galle	11	2	6	3
27	Violence & assault	Kandy	10	4	5	1
		Puttalam	6	2	2	2
		Galle	11	4	4	3
25	Marital/family disputes	Kandy	5	1	3	1
		Puttalam	14	10	3	1
		Galle	6	0	4	2
25	Tsunami housing/ relief	Kandy	0	0	0	0
		Puttalam	0	0	0	0
		Galle	25	11	10	4

21	Access to services	Kandy	9	4	5	0
		Puttalam	7	3	4	0
		Galle	5	2	3	0
18	Domestic violence	Kandy	8	3	5	0
		Puttalam	3	3	0	0
		Galle	8	3	4	0
14	Ethnic and religious violence	Kandy	7	3	2	2
		Puttalam	6	2	4	0
		Galle	1	1	0	0
11	Detention/ arrest	Kandy	4	3	0	1
		Puttalam	1	0	1	0
		Galle	6	3	0	3
88	Other	Kandy	36	12	15	9
		Puttalam	19	7	7	5
		Galle	32	14	17	1
325	Total	Kandy	124	51	59	14
		Puttalam	68	33	26	9
		Galle	133	51	62	20

Five actors dominated the accounts from the different sites as mediators in dispute resolution and problem management; namely, the police, local and national politicians, the GN, the courts, and members of local committees and societies. As mentioned earlier, some actors who were expected but were absent in these sites include religious leaders. Partly this is due to demographics, for example, Catholic and Christian priests are commonly active in areas where there is a high concentration of these religious groups, and partly due to prevailing context for example, the LTTE, paramilitary groups and the army are key institutional actors in dispute resolution in conflict-active north and east (see Raheem & Godessini 2004; Fonseka & Raheem 2011).

Table 3: Common mediators in the three sites (see Annex C for full table)

			Kandy	Puttalam	Galle
	Total	%	N	N	N
Local committees	133	23	17	69	47
Police	104	18	36	14	46

GN	51	9	35	2	14
Family members (advice, loans, etc)	48	8	22	13	13
Politicians, MPs, Ministers	39	7	16	8	15
Courts	34	6	18	3	13
NGOs	36	6	11	6	19
State Administrative Officials (DS, GA, Samurdhi, PHI)	18	3	12	2	4
No help	13	2	6	1	6
Thugs, Henchmen, Criminal elements	12	2	0	6	6
Other	86	15	43	23	19
Total*	574	100	216	147	202

* <1 actor per account

In the southern sites, the police were the most frequent mediator of disputes and problems, and the two local committees (the coir-worker committee & the temple society) the second. The (former) GN, family members and various politicians were mentioned almost equally. In the central sites of Podimalwatte and Mahamalwatte, the police and the GN played equally prominent roles in the accounts provided by the informants, with almost one in three of the cases noting a presence by one or both of these actors. Informants from these sites also mentioned family members as significant contributors to the process, with one in five of the cases being resolved or managed through intervention and support of family members. The courts, the local group known as the peace awareness committee, and local politicians were also noteworthy interveners in the central site. The local mosque trust boards resounded most consistently throughout the collected accounts in the north-western sites, more so in the settlement of Periyannagar than in the village of Kundruvillai, and making a decisive presence in almost seven out of every ten stories. Even though the mosque trust boards were the primary agent of problem resolution in these two sites and closely controlled recourse to ‘outside intervention’ in the case of disputes as described in the previous chapter, informants still noted considerable police involvement; their involvement equalled that of family

members. The other two frequent actors were the board of the Grand Mosque of Puttalam and local politicians.

A point of initial surprise in relation to this first set of narratives was the significance of the police in everyday problem management and dispute resolution within the village, and the prevalence of violence that accompanied it. Many speak of experiences of intimidation, assault, discrimination and corruption. Some requested anonymity because these involve figures of authority and power in the region. For these reasons, I have decided to conceal exactly where the villages are located, instead providing an approximation of its geographical region. The narratives have also been tweaked and amalgamated in such a way that they retain the essence of the stories but disguise the informant. Some incidents are too specific and detailed, and therefore readily identifiable to a knowledgeable reader. If these cannot be easily camouflaged and yet are indispensable for the analysis, I have changed identifiable features considerably. Despite my initial apprehensions that I had not spent ‘enough’ time in the field, I found that the information I had collected was rich and substantive enough to provide me with a considerable degree of confidence in my analyses of the three sites.

Two factors helped to make exploring these topics through narratives easier than I had expected; though they are not without their disadvantages either. The first was that my research period coincided with significant political transition in the Maldives in 2008. This was widely reported in the news, and as soon as I introduced the focus of my study as ‘how people solved problems in a way that was satisfactory and just’ and shared the information that I myself was from the Maldives – though born in Sri Lanka – many naturally linked my desire to study this topic to ongoing political reforms in the Maldives. They remarked on their own history of democracy, political development and justice in the country, and offered their opinion on what this new development would mean; some saw the ‘end of peaceful

times' in the Maldives and offered me their commiserations, others congratulated me because the Maldives had now become 'a modern democracy'. My situation was not quite that of an insider, yet the long and friendly history between the two countries combined with my having been born in Sri Lanka also meant that I was not seen as a stranger neither as someone 'too foreign'. The ubiquity of Maldivian students in Sri Lanka (the former President of the Maldives was one, I was frequently told) led people to assume that I was there to learn from Sri Lanka for the Maldivian situation. This meant that the interviews were quite relaxed, much more like a discussion than a formal interview; and I was often told what the Maldives should do differently. Informants were quite candid in discussing many 'negative' aspects of contemporary Sri Lankan society that they thought I should understand, from endemic 'jealousy' to variants of modernity-induced selfishness and greed. At the same time, other informants were keen that I was left with an image of Sri Lankan society as 'good and decent'. In this and many other ways, these accounts – and also my own analysis of them – are delimited by my non-insider status.

Aware that the outcome of sharing their story was going to be 'a book of some sorts' about justice in Sri Lanka, people would urge me to include their story in it. Some would proffer it as a sort of moral tale from which I was to understand how things happened in Sri Lanka and consequently avoid repetition in the Maldives. The testimonial nature of their accounts was strongly evident. In this sense, the gap between people's apparent expectations of a book (i.e. its testimonial character, possible influence, or being read by a wide group of people) and the usual trajectory of a doctoral thesis caused me considerable discomfort, and one way I tried to address this was by repeatedly stressing that these stories were for my studies, i.e. helping me to better understand the situation. Having taken on the task however, I must now do what I can. I would like to take Das's notion of the anthropologist as a (mediating) 'voice' seriously and hope I do justice to the stories I have been told; and that in their re-

telling I communicate adequately both the essence of the issues and the struggles of a narrator situated in a complex moral terrain.

The second was that the topic of problem management was introduced in a way that invited informants to offer their own stories of success and failure, and to provide their own evaluations of the outcome. This made story-telling seem less threatening; it also allowed the narrator greater control. The narrative revealed some of the social relations and practices prescribed by the social worlds in which they lived. At the same time, they could reflect on the dilemmas faced and their moral concerns with the ensuing choices and decisions (see also Plummer 2001, Zigon 2008). In telling about his ability to persuade the local police officers to arrest and assault a known young troublemaker who had been rude to him in the village, the respectable middle-aged manager in this study focused on the strategies and relationships he was in a position to utilise, and shared his sense of triumph that he had satisfactorily resolved one of his (and, according to him, the community's) problems¹¹.

In his book, *Morality: An Anthropological Perspective*, Jarrett Zigon (2008) proposes a distinction between morality and ethics. He suggests that morality should be understood as “an unreflective and un-reflexive disposition of everyday social life, i.e. it is not thought out beforehand, nor noticed when performed.” Some of the stories here indeed have this quality to them. Describing the problem or dispute, their attempts to manage or overcome it, and the outcome and consequences, the focus of the narrators were on giving an account of what happened, what they did or and the results of their actions. It is only when asked to account for these actions and outcomes that an ‘ethical moment’ occurred (Zigon 2008). At this point of these accounts, people became more self-conscious in their response and sought to justify the events, the outcomes, and the actions of various protagonists of the story. In doing so, they drew on the complex and fragmentary nature of the political and historical

¹¹ Interview 1.3.6

contexts of their social lives, thus acknowledging the connection between the internal world of individual actors and the social and political realities in which action and choice take place (Ellis & Flaherty 1992).

Strong emotions have accompanied people's decisions to speak about some of the cases described here; a vivid sense of grievance, outrage at injustice, and disgust and humiliation arising from prejudiced treatment. I had expected that because of its long history of conflict and violence, people would be reluctant to name perpetrators, describe their experiences and share their hopes for justice. On the contrary, I found that people willing and in some sense even eager to describe what they saw as the problems of problem management in Sri Lanka. I was surprised by how much detail people did put into the stories that they chose to tell. Nonetheless, in analysing these stories, I have kept in mind that these are incomplete accounts, shared from a particular perspective and with particular motives and tried to pay greater attention to these aspects than to the verification of whether these stories were 'true' accounts.

Some were reluctant to share accounts of their personal problems. A few mentioned community problems in general (such as drugs, crime or ethnic violence) but stated that they personally did not have nor had they ever had 'problems'. Their emphatic and sometimes indignant denials suggested that they thought those who had problems were in some ways problematic themselves. Others chose to talk about specific recent events in the community. In a way, these latter conversations provided interesting (and sometimes) contradictory perspectives on what were seen to be significant events in the village. One of the cases that will be looked at in more detail later on involves the sexual abuse of a young boy by a monk. Differing versions of why the monk was not prosecuted was given by the boy's aunt who was caring for him, a member of the temple society, and a parent whose children attended the Sunday School which the monk ran, to all accounts, rather successfully.

Such contradictions were not only to be found amongst the different narratives, but also within them. For example, a woman who reproached the police for being partial and negligent nevertheless spoke glowingly, and to all appearances neither critically nor self-consciously, of how her brother, a policeman, had taken extra efforts to help her neighbours in a domestic dispute.¹² This is not surprising. People hold multiple viewpoints on the same issues, depending on the particularities and peculiarities of the time, place and circumstance of the event (Bourdieu 1980), the meanings it holds for them (Plummer 2001), and the people involved. The set of motivations and relations driving the actors and the narrators also seem pertinent.

The second set of interviews with lawyers, activists and practitioners was conducted during March to August 2009, to explore in detail and clarify some of the themes and points arising from the preliminary analyses of the first set of interviews. There were 25 interviews in all. I have used these to supplement my analysis of material from the three research sites.

Ethical Considerations

In addition to earlier elaborations of specific ethical considerations within the methodology, this section summarises the key ethical points of this research. My previous research efforts in Sri Lanka had demonstrated the importance of managing expectations, as many informants were used to development-related research geared towards setting up specific activities and projects. For this reason, in interviews we stressed the point that this particular research would not result in any immediate or future direct benefits to the individual or community concerned. Nonetheless, it was essential that we responded humanely and ethically to instances where informants we encountered were distressed or known to be at risk of harm or otherwise in need, by linking them up with the necessary support. Indeed, as

¹² Interview 1.3.8

anticipated, we were able to refer some of the cases (with the consent of those involved) to partner organisations for follow up.

Informants were provided with information about the nature of the study, background details of the research assistants and of myself, and with details for a contact point from the partner organisation, and asked explicitly for oral consent at the start of the interview. They were allowed to decline to participate. Informants were also reassured that they could ask to stop the interview at any point in the interview or request the subsequent removal of any information they had shared with us.

I have changed the names of all informants in this study. As mentioned earlier, I have also altered the names of the villages and provided only an approximate location. This has been done in response to the request for anonymity by some of the informants, in a context where their accounts revealed unanticipated levels of intimidation and violence by figures of authority and power still living in close proximity to the informants. The findings of high levels of violence in the accounts together with the understanding of how they impact on people's access to justice and 'just' outcomes have made it an imperative that I share my analysis and conclusions with those who work in Sri Lanka to address these concerns.

As such, I intend to share my research findings as widely as possible with legal and human rights activists and policymakers, including The Asia Foundation and its partner organisations, so that they may be able to utilise it meaningfully in programme design and implementation, where relevant.

Limitations of the Study

The study takes an explicit focus on stories people tell about the police, the different dispute resolution mechanisms and the legal system in Sri Lanka. These are, as noted by various authors, subject to problems of memory and representation (Ellis & Flaherty 1992, Atkinson

et al 2001). I have tried to be sensitive to the possibilities of misrepresentation and the detailed case studies help mitigate some of the effects of memory. A second limitation is that I have kept away from the institution of the police itself, for the reason that the political complexities at the time did not make this seem safe. As much as possible I have used other studies to balance this. These insecurities are reflective of the larger difficulties in determining 'facts and truth', one of the difficulties at the very heart of interventions for dispute resolution in Sri Lanka.

Chapter 3 The Content, Context and Nature of Problems

The chapter presents the key problems in each site and situates them in their current and historical socio-political context. I look at the personal and social significance of problems for informants, how problems are created and exacerbated by local economic, social and political dynamics, the primacy of personal characteristics and social relationships on the production of problems, and their multidimensional and interwoven nature. I also examine the implications of ethnicity, religion and national policy in how problems are described and framed by informants.

Emotional accounts of socially definitive moments

Four of us sat under the half-built porch of Prema's small house.¹³ Adjoining the house was an even smaller 'home-shop', a tiny low-roofed dark room which belied the hot sunshine outside. There was an open window on the front wall of the shop, through which trade of everyday items and groceries could take place. Prema had left her shop unattended for the interview but she kept a sharp eye out for customers. If someone did come by – mostly older men in search of betel packets or tobacco – she called out to a busy-looking young woman who would rush out from inside the house carrying a small child and attend to the customer. This was the wife of Prema's only son. The child was her grand-son. In addition, Prema looked after two of her younger brother's children, whose parents had migrated many years ago, the father to Colombo and the mother further afield to the Middle East. Prema was a small stout woman with greying hair held in a tight tapering plait. She sat on the sill of the windowless frame in the wall separating house from porch. The translator, research coordinator and I sat on white plastic chairs which had been brought out when we had first introduced ourselves.

¹³ Interview 1.9.1

Before we could explain the purpose of the interview, she apologised for the lack of ‘proper’ chairs, saying that the tsunami had taken away most of their belongings. Their house had been categorised as semi-damaged, she went on. Prema was thankful that the house had been shielded by two large mango trees; they had diverted most of the rushing water to the sides. The front wall withstood the force but the corners of the house had suffered. As a result of these damages, the family had been issued with five thousand rupees from Siyath Foundation and with a variety of household utensils and food as relief items. These were very useful as they had very little at the time, she said. She pointed out the repairs that had been done with the money; holes patched up and door- and window-frames replaced (although there had not been enough money to put in doors and windows). Newly plastered areas were visible on the wall in the form of smooth grey circles.

They had also tried to rebuild the limestone kiln at the back of the house, the business which her husband had engaged in prior to the tsunami, and to purchase his lost machines. But that proved too expensive. In any case, she noted, there had been several post-tsunami restrictions on limestone quarrying. Permits were harder to get, and ‘you had to know someone to get one’, she observed. The restriction had affected many families, particularly the men. Her husband had not managed to find other employment; occasionally he helped someone else to quarry and earned a fourth of what they had used to each month. In the meantime, the little shop was what they had added as an extra income-generating venture. Prema had also taken up sewing in her spare time, repairing or making clothes on demand, work that she described as hard on her back.

There were other ways in which the family endeavoured to make up the shortfall to their income. Her husband regularly hired a three-wheeler. Any money that he made above the rent of the vehicle and the cost of fuel was additional household income. Prema took on seasonal work when she could. She had recently engaged in the commercial preparation of

lanterns and sweets for the Buddhist festival of Vesak. This was common work for women and children along the coast. In the months just after the tsunami, she had engaged in coir-rope making but had since given it up. I suspected from her tone that she felt the work had been beneath her status.

They had been a fairly well off family by village standards, earning well over forty thousand rupees every month with their limestone quarrying business. They had sold four truckloads monthly but the sudden change in his fortunes struck her husband hard. With the extra time on his hands, he had become a regular kasippu drinker. She commented wryly that he was in the process of turning into a village ‘problem’. Prior to the tsunami, Prema’s husband had been well-regarded. He had had six employees whom he treated well; but he himself was now only an occasional employee in another man’s quarry, Prema noted regretfully.

This story of a post-tsunami change in family fortunes from Rakmulla – Prema’s village – was a familiar one along the southern coast. Most of our interviews in this village began, just as our interview with Prema did, with a reckoning of the damages and consequences of the December 2004 tsunami. Some mentioned the loss of family members or of the loss or damage to houses. Many mentioned the terror of the day, and how they had lived inside the temple compound for a number of days before moving back once relief assistance had arrived. An early tsunami impact assessment report on the Galle district estimated the number of deaths to be 4,233, with over a hundred thousand people affected, and the loss to infrastructure – such as government buildings, bridges, electricity poles – in the vicinity of 1,900 million rupees (PDHS, 2005). This estimation did not take into account the value of damaged houses or small businesses, such as those of Prema’s family. Galle district was however not the most affected in Sri Lanka; the east and southern-most coasts of Sri Lanka had suffered the brunt of the wave. The tsunami had also affected twelve other countries in

the Indian Ocean. The scale of the damage and its proximity to Christmas Day prompted an unprecedented humanitarian response.

For the first six months after the tsunami, there had been a glut of state, international and national organisations in both Rakmulla, and its adjoining village of Mahagoda, dedicated to relief and reconstruction, competing for the opportunity to be of assistance and for their ‘share’ of the community. Relief distribution – the provision of food rations, clothing, kitchen utensils, and school equipment – was the most immediate response, followed by repairs to infrastructure such as water and electricity supplies and the allocation of resources, financial and otherwise, for rebuilding and repairing houses. Other activities had been gradually introduced; vocational training programmes for young men and women, prolific ‘cash-for-work’ initiatives, children’s clubs, youth clubs, a pre-school, and numerous awareness and training programmes. The latter covered a number of topics including how to obtain lost documents, file police complaints, or prevent child trafficking.

For four years there had been intense activity and abundant resources. But by 2008 when we arrived for the study, this frenzy was over. It was a subdued and somewhat anxious atmosphere in which we conducted the interviews. Post-tsunami funds were drying up and people talked about how programmes were shutting down and organisations leaving. There was a reluctant recognition that not all the expectations and anticipations raised by the promises and circulating resources were going to be met, that the distribution of aid, land and housing assistance, educational scholarships and opportunities for vocational training or employment had undoubtedly benefited some but that others had lost out, and that it was largely too late now. Perhaps because of this, the accounts about post-tsunami interventions – which accounted for almost a quarter of the problems – were replete with a strong sense of relief or resentment, depending on whether the individual or family had been successful in attracting resources or opportunities or not. Prema’s own account seemingly described a

family who, post-tsunami, were sliding down the scale of status. Her anger towards those who she saw as having purposely blocked her efforts to obtain quarrying permits was formidable.

The emphatic discussions and strong emotion in these stories suggested that the post-tsunami context had constituted a definitive moment for families and individuals when their social status was in flux and hence, at stake. Michael Roberts (1974) terms moments such as these ‘socially definitive’ and notes that these are important moments where families may step up or tumble down the status ladder. He describes ‘the social scene as never static’ (1974:564); according to him, such definitive moments are always present in any given context – for example, in the possibilities for entrepreneurial activity, employment opportunity, socio-political alliance, and land acquisition or consolidation. Social mobility upwards results from the successful ability to utilise these opportunities; that downwards, from a failure to sufficiently protect one’s status against intermittent challenges from others. Veena Das (1995) describes critical events as those having the potential to bring about change, and indeed for most of the informants, the events in their accounts were of critical importance, in that being embroiled in a dispute process and its eventual outcome changed their lives often in dramatic ways. It is for this reason that I see these as ‘critical events’ for the families and individuals involved.

For many of the informants in the southern site and, equally, from those in the central and north-western sites, most of the events recounted were loaded with such social – and emotional – significance. This goes some way towards explaining the sharp emotions which accompanied many of the accounts. The emotions of anxiety, anger, outrage, despair, distress, triumph, relief, anticipation or hope came stringently through. Recognising these elements was crucial to understanding the problem’s significance to the informant – and why

a 'just' outcome and the lack of it (or rather, outcomes perceived to be so) mattered very much.

The primacy of personal characteristics and social relationships

Yet another reason contributed to the strong emotional notes in the accounts shared by the informants. The accounts suggested that for most of the informants, what propelled a situation into a 'problem' or a 'dispute' were the unsympathetic, jealous, arrogant, or self-interested responses of those immediately around them or from whom they claimed some form of assistance, social relationship or obligation. In other words, problems and disputes arose out of human agency exercised in the context of their very immediate social relations; resentful family members, exacting and intrusive friends, intolerant or jealous neighbours, oppressive or vengeful mudalalis, or inflexible colleagues and state officials all contributed to creating something into 'a problem'. In explaining their circumstances, informants problematised personal characteristics and behavioural traits of other protagonists – for example, hardheartedness, impulsivity, inquisitiveness, vengefulness, incivility, greed, ambition – purportedly stemming from their heightened interest in profits or power and 'getting ahead at the expense of others'. These ideas of jealousies, petty rivalries, grudges, resentment and envy represent what Peter Geschiere (1977) terms the 'dark side of intimacy'. He points to proximity and the press of everyday interactions as a necessary element in producing the circumstances in which these 'dark' emotions are likely to arise. Sally Engel Merry makes a similar point when she describes the problems of her disputants in her book, *Getting Justice and Getting Even*, as stemming from the forced contact and interdependencies disputants were forced into in confined and run-down neighbourhoods (Merry 1990).

To use an example from one of the accounts from the north-western of Periyannagar, Mariyam had experienced what she described as a jealous attack on her family by her neighbours.¹⁴ They had reported to the mosque trust board their suspicions of her having extra-marital liaisons, requesting disciplinary intervention; the board had in turn informed her husband. Her husband worked on a long-range fishing boat that went beyond the coastal waters for as long as a fortnight. For this reason, he was only home once or twice a month but earned sufficient income for the family. Mariyam pointed out that three of their four children attended school. She was convinced that jealousy of their economic and educational success was what prompted her neighbours to accuse her of infidelity. The incident caused considerable domestic strife; her husband quarrelled and hit her – something which she said he had not done before.

The allegations had further shamed him from living in Periyannagar and he had suggested that they move back to the refugee camp where they had originally settled following their forced expulsion from the north and where her mother and siblings still lived. Mariyam had agreed but found this very hard for a number of reasons; firstly, two of her children continued living in Periyannagar because their school was closer; secondly the conditions of the camp were doubly difficult after the relative luxuries of Periyannagar. On many occasions, Mariyam suggested returning to her own house but her husband did not want to return. Finally her mother and two of her relatives convinced him that it would be better to return to Periyannagar but that they should undertake ‘mantra work’, a form of religious protection and sorcery to ward off further evil. This they had done and returned to the village. For eight months however, her elder two children had been alone while preparing for their O’Level examinations and their grades had been affected by the domestic situation and her absence. While relieved that she had managed to keep her marriage together, Mariyam believed that

¹⁴ Interview 3.16.7

the objective of the allegations had been effectively achieved in that they had adversely affected her children's educational achievements.

Another stark example is the way in which the women from Rakmulla struggled to maintain solidarity and relationships despite the commonalities of their situation and potential for strong mutual support. When I first learned that some women steered clear of the co-operative approach to coir rope production despite its indisputable benefits in disrupting the hold of the mudalali over the women's lives, I was initially surprised. However as we collected more accounts I recognised that, at the core of the problem was the intimacy required of one another for the co-operative to operate successfully; such intimacy was sometimes a cause of concern, embarrassment and vulnerability.

In order to obtain help from the co-operative, women had to reveal domestic and personal problems to the other women in the group. This had on occasion caused gossip and subsequent shame for the woman and family. More distressingly, the women's choice of action and response to their problem was dictated by group opinion rather than their own preferences. They were told what to do, and their actions were monitored closely by members of the group, especially if a loan was involved. The mudalali was an altogether different type of figure. Less involved in the way they conducted their own lives, he was a source of unquestioning and non-interfering credit, even if sometimes harsh in demanding it back. More problematically, joining a co-operative severed the relationship of patronage with the local mudalali, and the women were required to rely on each other for help in a crisis. This was often not constructive. At a very practical level, the women could not easily provide a loan to another woman in need, being poor themselves.

Some women also chose not to join the co-operatives because of the group approach to coir-making; women tended to work in groups of threes and profits were split into thirds. Dissimilar domestic situations amongst the group, such as having a sick husband or young

children to care for, meant uneven labour contributions and different opinions on how profits ought to be shared. Rather than being generous about or sympathetic to these situations, some women complained that members became more stringent about them meeting their coir-rope supply targets. When friendships broke down under these strains, women were then forced to go back to trading with the mudalali who was often harsher with women who had belonged to the co-operatives. Women who shared these accounts indicated that they were worse off and more vulnerable now.

Stories such as these in which informants were placed at a disadvantage because of their intimate and interdependent relationships were not infrequent in other sites as well. The following sections and subsequent chapters reveal several occasions where intimate others played an instrumental role in creating and escalating problems people experience. Understandably and as mentioned earlier, these stories were laced with a heightened sense of betrayal and grievance and the notion that their circumstances were a direct consequence of intentional maleficence by those close to one.

The multidimensional and interwoven nature of problems

Ajantha's account of land disputes in her family was also a similar story where a cousin – who is also her neighbour – claimed part of her land.¹⁵ The story demonstrates another 'problem' about problems people experience that I would like to emphasise: many problem situations go beyond single-issues encompassing several aspects of an informant's life. Ajantha's great-grandfather owned a modest tract of land of about 5 acres on the outskirts of Mahagoda, one of which had been her grandmother's dowry. Subsequently divided, Ajantha's mother had received about a quarter of an acre. On her parent's death, Ajantha said, she and her four siblings received approximately 8 perches each. Because of its divisions across generations, the property was located alongside those owned by her

¹⁵ Interview 1.22.6

immediate and extended relatives. About fifteen years ago, a distant cousin who she described as politically ambitious – he had run as a candidate for local council elections – filed a court case that ten and a half feet along the length of the boundary of her and her brother's lands belonged to him. He claimed an error of measurement had occurred at the time of Ajantha's mother inheritance. According to Ajantha, the case was filed shortly after he had expressed a desire to widen the road which lay on his part of the land but ran next to theirs, so that his newly purchased car could comfortably reach his house from the main road.

Ajantha and her brother's claim to the land became tenuous when it came to light that both siblings had not consolidated their ownership. Ajantha had not formalised her title deeds to the property and although her brother had done so, he had failed to subsequently register his title at the Registrar's. I was told that these two formalities – crucial to consolidating land ownership – required money which neither she nor her brother had. From the stories of land disputes in the southern site and elsewhere, it is clear that completing the necessary legal procedures to secure ownership was beyond the means of most poor people. Without such documents, a civil lawyer later explained to me, ownership could be easily contested because there is no registered authenticated paper trail. This placed poorer families at an automatic disadvantage. Indeed, Ajantha's case went on for ten years, and the contested portion of land was in due course given to their cousin. By this time, he was a wealthy businessman, his brother a reputed doctor, his sons served in the army and his daughter held a clerical position at the Presidential Secretariat.

On the other hand, Ajantha had few relatives and friends to support or advise her in this situation and she relied almost exclusively on the services offered by the state – the GN to mediate the initial claim of land made upon her by her cousin, state officers to subsequently survey the land, the police to whom she made a complaint of vandalism and to whom she

gave a statement of witness regarding her brother's death, and the courts where she had unsuccessfully fought to keep the share of land she stated was rightfully hers. With the relative advantages of her cousin's background and connections (a theme I will return to in Chapter 7), Ajantha was quick to point out that it was no surprise that they had won the case.

The dispute had cost the family dearly, even resulting in her brother's murder. Whilst the court case was going on, there had been a series of scuffles over the land, including an incident where their houses had been seriously vandalised. On one occasion, her cousin had sent a group of men to put up fencing on the disputed boundaries and her brother had objected. In the resulting struggle, one of the men had shot and killed her brother. The man had been remanded and the case was still pending. In Ajantha's opinion, it was her cousin who was really responsible for the death because he had sent armed men to build a fence – she had given a similar statement to the police. Following this, Ajantha 'wrote' the land to her eldest son because she was tired of the legal hassles. Her son agreed to handle all future negotiations with her cousin and promised to renovate their vandalised house. But her decision had caused outrage amongst the rest of her children who announced their intention to contest her decision after her death. These threats scared her eldest son from investing in rebuilding the house. In the interview, she expressed worry about the security of her land and the future harmony amongst her own children. She lamented that she "had not known and would not know any rest up to the grave."

In telling us her story, Ajantha outlined the contours of a situation in which multiple problems were embedded. The problems and disputes in her account ranged from vandalism, murder, land disputes, harassment, and alleged favouritism on the part of officials to the bickering and in-fights amongst her own children over the house and land. The significance of these problem elements could only be adequately understood by knowing the history of relationships and the key events, the dynamics of which are likely to continue to

shape her situation. Moreover, the issues of one relationship bled into other ongoing relationships – for example, Ajantha’s relationship with her son, her brother’s wife, and her other children were directly affected by her struggle to meet the challenges of her relationship to her cousin.

It was not easy for her or for me to pick out a single-overarching or main problem. The story began with her cousin’s challenge to their ownership of the land, but very quickly acquired a multidimensional nature – each problem having its own trajectories of the past and present. Nonetheless, these trajectories intersected with one another at different points, sometimes zigzagging their way across several of the other issues. In this way, it became interwoven as part of her narrative. These different elements all ran one into the other, forming a story of a life full of suffering and struggle. It was this sense of a continuous struggle which Ajantha tried to communicate when she described her life as ‘not knowing any rest to her grave’. This was a sense I frequently encountered and as will be seen, is common in the other accounts provided by different informants across the three sites.

Hard-to-fulfil regulations that help maintain the status quo

Land – the fore-grounded problem with which Ajantha began her account – was a contentious issue in all three sites, accounting for the highest proportion of disputes in the collection. For this reason, I would like to take a closer look at the issue of land disputes in this section. Ownership of and access to land is central to one’s social status, living condition and wealth in Sri Lankan society (Rogers 1987, Melis, Abeyesuriya & de Silva 2006). Indeed in many South Asian countries, land is ‘an instrument of rule’ as Michael Roberts notes (1994:29). Owning land however was not just a matter of social status and power; it was evident from these accounts that at a personal level, having one’s own land

avoided the frightening possibility of becoming homeless, the financial strain of renting or the emotional one of having to lodge with relatives.

The possibility of land ownership in Sri Lanka for the masses is relatively recent. The majority of rural villagers were landless at the time of independence in Sri Lanka, although a series of programmes and policies were put forward at the time to address the issue. Interestingly, land reforms did not feature as a strong point in any of the political party agendas from post-independence (Samaraweera 1982). Studies show that land disputes usually emerge as the result of poorly thought-out and implemented land reforms (see Perera 2006, Samaraweera 1982, Pieris 1996, Bastian, N.D.). Perera (2006) states that both landless and land disputes revolve primarily around the issue of ownership and tenurial rights to land and productivity. The first major land reforms in the post-independence context in Sri Lanka came about in the 1970s, more precisely in the Land Reforms Act of 1972 and its later amendments in 1975. These reforms took place in response to the JVP uprising of 1971, and were supposedly meant as a measure to address the problems of landlessness and unemployment amongst the aggrieved populace by introducing ceilings on land ownership amongst private individuals and companies, and public companies.

However, Samaraweera (1982) provides a detailed analysis that shows how the reforms never really threatened the status quo of the landed and powerful in the country despite its general reputation as a radical departure from previous land policies of Sri Lankan government. Rather, he purports that whilst there was considerable transfer of power over land to the state, there were no significant redistribution of land ownership or change in land use and occupancy patterns amongst the general populace.

This is most evident in the central tea estates, where power was simply transferred from a number of foreign investors and owners to the state, but many landed families continued to own vast tracts of plantation land – as the law allowed them to sell title deeds to close family

members and in fact were even compensated by the government for initial dispossession of their land. Perera (2006) notes that less than 10% of the land nationalised were redistributed to landless families, and of these the majority were given to political party supporters.

Moreover, those who were given land under these reforms were not given the right to it as a commodity but rather, according to Perera (2006) a form of 'protective proprietorship' which meant that villagers were provided with permits and leases to the land they were issued, but were restricted on mortgage, sale and transfer other than to next of kin. Each set of reforms seemed to have brought more confusion about land ownership amongst the general populace. To complicate matters, much of the land-related legislation that did take afterwards was directed towards the areas outside the organised plantation sector. When re-privatisation of the plantation sector happened in 1992, it was the management of estates and not the land itself which were leased to private sector companies for a stipulated period – again with no real discernible changes to land ownership.

From early on, there was scant attention paid to proper documentation in line with land registration regulations. The Land Reforms Commission (the LRC), which was vested with the powers over land nationalised and later re-privatised under the 1970s land reform legislation) allegedly distributed land without proper survey, and resettled families were given settlement letters in line with prevailing policy; such letters have little acknowledged place in the complex arena of land law. Despite attempts by the new settlers to secure the deeds to their land, families remained in possession of a settlement letter that declared their conditional ownership. As they subsequently came to find out, these were sometimes insufficient for asserting their ownership in the face of challenges by powerful and well-connected individuals. Moreover, as was to be anticipated issues of sale, mortgage and inheritance became complicated, as things also did on those occasions when land boundaries were disputed between two or more parties.

It was issues such as these which made up the larger proportion of land disputes, especially in the central and north-western sites where ownership was tenuous. In Mahamalwatte, the village outside the tea estate in which we did our study, residents regularly engaged with officials from the LRC to ascertain ownership, obtain permission to cut down trees or negotiate access to services such as electricity. They were unable to authoritatively fend off challenges to their ownership, depending instead on their relationships to and the goodwill of LRC officials as well as the relative power of the challengers. To take for example a case from this village, Samararatne had lived for 30 years on land gifted to his wife's family in the late 1970s by the provincial minister who was known to his wife's brothers.¹⁶ They had received an official letter of settlement to the land, and had been promised the deed afterwards, which (like for many others in the central highlands) never came. In 1992 the estate management had forcibly acquired 3 acres of his land as part of a hotel development project. The management had not so much dismissed his letter of settlement as claimed it was invalidated under subsequent lease agreements with the government. He had tried to get LRC officials to affirm his right to the land but it appeared they were reluctant to challenge the management of a powerful company on his behalf, asking him instead to take the case to court. On the other hand, Wijeyaratne, whose land had been acquired in very similar circumstances and who also had only a letter of settlement to determine his ownership status, had requested the LRC to resolve a case between his neighbour and himself.¹⁷ The neighbour hotly disputed the boundaries of a fence which he had put around his land. In this case, the officials had readily agreed to a survey and shortly afterwards had ruled in his favour. Talking about this incident and why he had been successful in his case, Wijeyaratne disdainfully referred to the socially suspect status of the family; the wife had eloped many years ago, leaving the owner and his two children. As such the family was looked down upon in the village and had little social and political support. He unselfconsciously remarked

¹⁶ Interview 2.18.7

¹⁷ Interview 2.10.9

that, with this comparative social background and his links to well-known politicians, he had a clear advantage in influencing the opinion of the LRC officials in his favour.

What I would like to focus on here, however, is not the comparative advantages of connections to key officials and politicians or of those of higher social status (which is explored in greater detail in Chapter 7) but rather on the situation where land ownership cannot be authoritatively and unambiguously asserted because of systemic oversights and failures to help people consolidate their ownership. In Ajantha's and Samararatne's cases, the lack of formal documents (land registration, title deeds) made their assertions of ownership precarious, leaving an ambiguity to the proceedings which could be successfully utilised by opposing parties. These formal documents are ones that are required to be issued by the state.

The stories – and many others similar to these – suggest that the labyrinth of regulations related to land ownership facilitates easy challenges to land ownership (in which the more powerful party often has an advantage). The lack of political will to change the situation around land disputes – e.g. allowing easier land registration, the formalising of land surveys, issuance of title deeds under land development or reform schemes – indicates real limitations for vulnerable or lower-status people to assert their claims in the face of challenges by more powerful group. This allows for the possibility of maintaining the status quo as political contexts change. The widespread and enduring consequences of such confusing regulations raise the question whether there is a lack of political will to address the issue, or more seriously, a deliberate oversight which allow the status quo of land ownership to remain in flux to the advantage of those in power. Kleinman and Das's view of state policies as a 'soft knife' through which 'the experience of violation' may be inflicted on the 'everyday lives of marginal groups' is evident here (2001:10). The ambiguity that is maintained by the wont of political will in the case of land issues is also resonant in the themes I raise in chapter 6

which focuses on vague definitions of those people whom the state find ‘suspicious’ – a vagueness that, I argue, allows a little too conveniently the category of ‘suspicious’ people to be defined as any person who is a potential threat to the state depending on the changing political situation.

The precarious and vulnerable position of being an ‘outsider’

In the context of widespread migratory work, displacement and continuing resettlement or colonisation schemes, there was another position which was frequently indicated in the accounts as being a source of problem and a continued position of vulnerability. From the perspective of a community, ‘outsiders’ were often seen as troublemakers, with insinuations that they did not understand the community, worked to undermine or destabilise community relations, or sought to strengthen their own social position (and that of others in their networks) and so in this way, impose upon the community. These prejudices meant that those labelled as ‘outsiders’ were placed in a precarious position socially and were much more frequently caught up in seemingly intractable disputes and problems. Apart from being isolated or badly treated, they were easily disparaged and dismissed unless they enjoyed the support of a powerful local figure (which most of the ‘outsider’ informants in my research did not). Even in everyday disputes such as children’s fighting, accessing water or the placement of flood-prevention drainage canals, there was always the possibility that others used this vulnerability to mobilise anger against or harassment. The accounts from central Sri Lanka but also from elsewhere suggest this experience of being viewed and treated as ‘outsiders’ to be a fairly common one.

For example, Chandani, to whom I was introduced by the GN, was an outsider to the tea estate.¹⁸ She was a young woman of twenty and with a small infant. She was one of a small number of Sinhalese living in Poddimalwatte, and the GN was well-acquainted with her

¹⁸ Interview 2.7.1

father. She was married to a Tamil man whose mother worked on the estate, and her parents had refused to talk to her since her marriage. She seemed lonely and isolated. Although her neighbours occasionally helped her out at the GN's urging, for the most part, the other residents of the line building in which she lived left her alone. The frequent clashes between Tamils and Sinhalese were especially not easy for her. The neighbours did not speak much to Chandani, but during these times, there was added distance – a mutual simmering sense of mistrust, fear and grievance. Chandani, like most other Sinhalese from the villages, did not speak Tamil, though her Tamil neighbours all spoke fluent Sinhalese. The language of communication marked her doubly, and so she spent most of her time inside with her infant son. Similarly, disputes in the southern and north-western sites also took on greater significance if and when these were against those termed 'outsiders'. As the accounts suggested, the outsider status was one that had to be carefully negotiated. People who had moved or settled into an area reported having to negotiate their space and interactions cautiously for a number of years, sometimes for a generation or longer.

Existing opportunities were themselves problematic

The post-tsunami economic climate in the south of Sri Lanka was indeed rather bleak. However reading the accounts not just from southern Sri Lanka but in the other two sites as well it was clear that the employment options which existed were themselves part of, if not the, 'problem' for a considerable number of informants. For example, apart from the traditional economic activities of coir- and lime-making in the south, three of the more prominent possibilities were to join the security forces, take up employment within the nearby tourist industry or seek foreign employment. In the villages of Mahagoda and Rakmulla, all options generated a deep ambiguity amongst these communities. War had resumed in the north and east in 2008, and recruitment of young Sri Lankans, mainly the Sinhalese, to the security forces was high. Perhaps as a consequence, a considerable

proportion in each village, one in eight families, had either a husband or son in the army, navy, air-force or the reserve police. Rajesh Venugopal has identified the military as the only component of state that has expanded since the 1990s and that has ‘become the single largest employer of rural Sinhalese youth’ (2010:601). The families in this study expressed mixed feelings about such employment. The regular income was appreciated but there was also a strong fear of loss or injury. The everyday deprivations and hardships of army life caused families to be both sympathetic and proud – having to eat only rice and dhal for months on end and the long hours spent in the sun on patrol in defence of the country were mentioned.

Yet, given the fighting and harsh work conditions, a number of men had deserted the army and returned to live surreptitiously in the villages. Forced to live as fugitives, they were figures of constant trouble, forming armed criminal gangs or exhibiting problematic behaviours. The case of one particularly troubled deserter had long irritated both villages, and several informants named him as a key protagonist in their accounts. A resident of Mahagoda, Asantha was the eldest of a large family of eight. His father had abandoned the family after migrating to Kuwait 25 years ago.¹⁹ Financially destitute, his mother had distributed the children among her relatives. Asantha had come to live with his aunt, with whom we also had an interview. According to her, he had dropped out of school relatively early and had joined the army. A year later, he had deserted the army after being shot at during a military-rebel skirmish in the east of the country and had returned to the village.

He had since developed a reputation as a mentally unstable, extremely aggressive and sexually troubled man. He had broken into several houses to assault women, and was a known exhibitionist in the area. Two of our informants shared such encounters who also mentioned that they had complained to his family and to the police. In response, his younger

¹⁹ Interview 1.31.9

brother had severely beaten him, and so had the police. Neither intervention had much impact. When his mother had reproached him for his behaviour, he had produced a gun and threatened to kill her. When his aunt refused to accommodate him any longer in her house, he had brought a device which he insisted was a bomb, prompting the family to vacate the house and call the bomb squad. As much as he was an irritant in the village, Asantha – and others like him – was also a symbol of the travails of army employment and the potential for it to damage a person beyond repair; a constant reminder to all families who had members in the security forces.

The other common employment option was work in the coastal tourist industry. Apart from charges of child sex tourism, the industry was, wrongly or rightly, associated with the increase of unwanted ‘modern’ influences, the use of drugs, and the sexualisation of adolescent boys and girls. The recent increase in ‘brown sugar’, i.e. a crude form of heroin, facilitated by links to Colombo through the tourist industry was particularly deplored, for its addictive qualities caused young men to steal from their own houses or pilfer household income. For a proportion of the informants, it was about the drug use of their own sons and nephews which they spoke about. Another related complaint revolved around the sexual harassment of young girls and women on the roads and buses. Women spoke about enduring harassment themselves but their biggest concern was what they observed to be the experience of girls and young women. Groups of intoxicated young men from the village and its vicinities subjected girls and women to a litany of catcalls and comments or accosted them on the main roads of the villages; even short trips to the nearest town were unpleasant. Since they could not always accompany their daughters to and from school or work, older women worried about the discomfiting impacts of these experiences on the young women, and the way it served to detract from their reputation.

Of all the various economic options, migration – and especially migration overseas – served as the most effective strategy towards land ownership, especially for the more vulnerable sections of community. The larger proportion of less well-off families in all three sites had bought their current houses and land from having worked abroad. In fact, the fortunes of one in every six families amongst those whom we interviewed in the central and north-western sites seemed to depend upon a migrant worker; with men likely to work or do odd-jobs in shops or hotels in urban centres and women migrating as domestic workers to Colombo or the Middle East. Some men and women also found employment in the Free Trade Zone or in the other garment factories in the vicinity. For example, the tea estate did not offer a lot of opportunity for men. It was mostly the women who plucked tea and the greater proportion of workforce in the tea factories were women. The men had occasional labour work on the estate felling trees, pruning bushes, and clearing land on a piecemeal basis. There were few supervisory positions and strong competition for available jobs, secured generally by higher-caste men with the right political and social connections. Chandani's husband Devaraj, had tried to find regular employment on or closer to the estate. But with the limited estate options and a dearth of other sources for jobs, he had sought employment further and further afield until a cousin had finally found him a job at a restaurant well over 50km away. The work was hard, the income meagre, and Devaraj was unhappy being away from home, explained Chandani. Because he was an 'estate Tamil' and an 'outsider', he was not treated well by the others and he was, like her, often lonely. His working and living conditions were barely tolerable – he worked daily from six in the morning to one at night, and slept on the kitchen floor. He could visit home only every other weekend.

The distress of having to be apart so early on in their relationship, the isolation, his unhappiness with his job, and the still-inadequate income were taking their toll on their marriage; at least this was why, according to Chandani, Devaraj had recently increased his intake of alcohol. The weekends that he was home, he arrived intoxicated and continued to

drink heavily throughout his stay. She suspected this to be his frequent state even when away but felt powerless to stop it. Drink made him quarrelsome and sometimes violent. She tried not to upset him but this was not easy when she had her own worries and was sad and unhappy about her present situation.

Migration of partners and parents put enormous pressures on families and relationships. Although it was clear that men's migration adversely affected family wellbeing as in Deveraj and Chandani's situation above, it was rather women's migration that caught the censure of the public and policymakers. Women's migration was seen as contributing to the moral decay of social life in villages. The main public discourse around women's migration was that it contributed to the neglect of children, marital breakdown, and alcoholism amongst men; at a social level, the reputation of women who had lived abroad for several years away from the watchful eye of their families and society was highly suspected (see for example Gamburd (2000) on women's difficulties to re-integrate in society post-migration). Hence, migration was regarded as double-edged swords – as were the other employment options, possessing a keen capacity to rip the social and moral fabric of their families. Thus, the nature of the opportunities available was a heightened source of anxiety for many families and themselves part of the problem, according to the informants.

The foregrounding of ethnic and communal tensions

A high proportion of families talked about economic poverty and the toll poverty-related stresses were taking on individuals and relationships, particularly the increased intake of alcohol of men, as in the case of both Chandani's and Prema's husbands. The practice of heavy drinking and intoxication amongst men was a problem in the all three sites, as in other parts of Sri Lanka, and much has been written about this (e.g. Gamburd 2008, Samarasinghe 2006). While women in this study spoke about the detrimental effects of alcohol on the men

they knew (husbands, brothers, fathers and fathers-in-law), men who spoke about problematic alcohol use implicated it as a factor for social and communal disharmony. In many accounts, people highlighted the way that drink turned communal tensions into problems.

In fact, just a week before our visit during the Deepavali festival, there had been a violent clash between a group of Sinhalese and Tamil men from these two villages, resulting in the critical injury and hospitalisation of a Sinhalese man. The incident had started at a local bar and the impact of alcohol use was identified as the main contributing factor. Several men spoke about this event, providing the following account. Around noon on Deepavali, a disagreement had occurred between a Sinhalese and a Tamil. The reason for this was unclear – some said that it was because the Tamil had confused his own drink with that of the Sinhalese; others said it was because the Tamil had been verbally rude to the Sinhalese – though again over a drink. In any case, one of the men had been loudly scolded and struck; most accounts stated that it was the Sinhalese who had struck the Tamil. A group of Sinhalese men congregated in response to the spreading news that a Tamil had been abusive to a Sinhalese and, it was said, to punish the Tamil for his insolence. Others said that ethnicity did not matter as much as the fact that the Sinhalese man was part of a rough local gang, and it was his men who assaulted the Tamil outside the shop – his Tamilness being somewhat incidental to the event. In any case, a fight had begun in front of the bar and rapidly spilt out onto the street. The resulting brawl had expanded to include over fifty men, both Tamil and Sinhalese. Five men were injured – three Sinhalese and two Tamils. They had been taken away to the nearest health facility, most had been released with minor medical attention, but one Sinhalese had been subsequently transferred to the nearest large hospital with severe knife wounds to the stomach and in critical condition. The police were notified. Stationed more than 40km away, they had arrived on the scene only towards late afternoon and had proceeded to round up (only Tamil) men – it was unclear whether the men

were being arrested for initiating the fight, inflicting injuries or simply on the basis of reports that they had been present at the scene of the fight.

For the next few days and in fact until the injured man was discharged from hospital, the atmosphere was tense. The Tamils in Mahamalwatte and the surrounding vicinity were extremely anxious of violent reprisal in case the man died; during this time, they stopped attending work, kept their children from school and stayed home. Men and women were worried about crossing predominantly Sinhalese areas or of attacks on their homes whilst they were away. Having to refrain from work was particularly hard because they needed the income on a daily basis. “They [the Sinhalese] forget that we need to fire up the stove too,” a daily labourer grumbled referring to the fact that families went hungry for a number of days. The Sinhalese also kept abreast of the news, requiring regular updates from those who visited the hospital and estimations of his recovery and return. This state of apprehension and anticipation continued for almost one week.

One afternoon, the research coordinator, the translator and I happened upon the house of the man who had been injured and was told by some who were discreetly milling about a few metres down the road that he had been discharged early morning from the hospital and was now home. Urged by the coordinator to greet the returnee from hospital, we went up to say hello and were invited indoors. An older Tamil man – whom we knew to be a mason to some Sinhalese families in the vicinity – was visiting him at the same time. The injured man, Tharanga, assured us that he was recovering well. The Tamil man told us that he was a long-standing friend of the family and had been on good terms with Tharanga’s father. Repeatedly, the theme was brought up that ‘this’ – meaning to say, the injury and the fight both – had happened as a result of the impetuosity brought on by drink. The older Tamil man insisted that the actions were not the result of animosity between ethnic groups. His tone seemed to me to be a mixture of appeasement and appeal. After some time, Tharanga

too reiterated that relations between the communities were mostly cordial and that this event was an aberration. The rationale that alcohol was to be primarily blamed for the event was vigorously accepted, and appearing much relieved, the Tamil man left the house shortly. As we were leaving the house, I met with two other research assistants visiting neighbours in the area. They looked a little surprised at our coming out of this house, asking us whether we were not aware of the family's reputation as one of 'known troublemakers' in the village. The injured Sinhalese man, I was told, was a village thug and had intimidated several people. In fact his Sinhalese neighbours had insinuated that he might have as equally been injured by a Sinhalese as by a Tamil, given the opportunity.

The main emerging consensus amongst the Sinhalese as the day wore on was that the events of the recent Deepavali were an 'unfortunate' result of alcohol and not of ethnic differences. I got the sense that some had waited to see Tharanga's reaction before deciding how they themselves would continue in their reaction to the events. Tharanga's emphatic reassurance of his recovery and his acceptance of the Tamil man's conciliatory gesture seemingly signalled the beginning of the end of immediate animosities.

By the time our visit to this site ended, the entire episode – i.e. the disagreement, the ensuing fight and the knifing – was primarily talked about by the Sinhalese as yet another impetuous act caused by too much drink. In contrast, many Tamils continued to refer to the incident as the most recent example of simmering ethnic tensions. Partly the reason was the more fundamental impacts of such events on their day-to-day lives – the loss of income, the deep and constant fear of reprisal, the detention of their young men (some still in detention when we left), and the disruptions to their lives which went beyond the single event and left lingering traces of resentment, anger and fear. It was stated with a real sense of grievance that the police had typically arrested only Tamils and not any Sinhalese.

This sense of ethnic grievance and resentment was very strong in most of the accounts in the central highlands. Stories of violence and grievous assault between people from different ethnic communities, and their consequent legal, social and economic troubles, constituted one in every five accounts. Some involved large numbers of people whilst others were contained to particular families and neighbours. In most cases, violence was triggered off by disagreements over land, water usage, road reconstruction, fencing, employment issues, or loan payments. These types of disagreements also existed between people of the same ethnicity; but strikingly, none of these resulted in the same sort of assault and violence as when these were between different ethnic parties. There seemed to be a greater propensity towards violence when ethnic differences were involved in the central highlands however, and in this sense, the numerically larger but politically and socially inferior Tamil communities in the central highlands remained vulnerable in the context of disputes and problems. To suggest that violence and assault were instigated on purely ethnic grounds would however be misleading. The problem was described to me as primarily ‘ethnic’, yet the accounts included a heady cocktail of political, social and economic dynamics.

Although comparatively less common in the other two sites, communal tensions also existed in various forms in each of the site. In the southern site, these took the form of violence against what was seen as attempts by Christian groups to set up a church in the post-tsunami context. The church was repeatedly vandalised – with support from local politicians and members from the local temple society – until it was finally shut down. In the north-western site near Puttalam, the tensions between local and displaced Muslims expressed themselves ultimately as attacks on regional identities. But other factors – economic, political and social – all played a part in whether and how communal or ethnic tensions were maintained and/or resolved.

The role of local politics and the communalisation of problems

In accounts from the central highlands, it was commonly alleged that Tamils and Muslims were supporters of the UNP or the CWC while the Sinhalese were mostly in favour of the SLFP. We were told of an incident in 2002, the events of which were recounted by several Sinhalese informants with barely concealed anger, many of whom described themselves as SLFP supporters. According to them, a large group of Tamil men with affiliations to the UNP had threatened violence to the Buddhist temple over an unused and adjoining piece of land, claiming that the temple had been gifted the land under contested controversial conditions by an SLFP politician in the 1990s. A correspondingly large number of Sinhalese men had gathered to protect the temple, because they perceived the protest as one against Sinhala Buddhism. It was stated that tensions on that day were defused only by interventions from the monk.

In 2002, a Sinhalese businessman, eyeing an opportunity, had apparently influenced a close UNP associate, a Tamil, to denounce the gifting of this land as illegitimate, with the intention of subsequently buying the land himself for a land development initiative. The UNP associate had then gathered over a hundred Tamil men to protest the gift of land as politically motivated and to demand the decision to be reversed, with some anticipation that the development opportunity would result in personal political advantages. One Sinhalese man who spoke about his part in the incident explained how he and others in the village had been persuaded by local (SLFP) politicians to stand up against this initiative to 'grab land' from the Sinhalese people. He stated that Tamils and Muslims were 'land-grabbers' and that the UNP encouraged this tendency, so they had to defend themselves in this way. Similarly in the South, one of the local JVP politicians had been very active in instigating people from the Sinhala Buddhist community to protect itself against potential overtures by Christian groups to establish themselves in the vicinity.

In this way, while political leadership and political affiliation were crucial elements of the maintenance or escalation of communal problems, these events were almost always presented to me as examples of ethnic tension and conflicts with only the detailed description ultimately revealing the existing political links. Unlike on the Southern coast where political affiliation was more explicitly recognised as a key factor in disharmony and dispute, in the central highlands and north-western sites, ethnic and communal affiliations were readily available to deflect attention away from the way that political struggles played a role in foregrounding these categories.

These dynamics were also evident in the Puttalam cases, where attempts to appropriate or retain resources such as land in the North or in the Northwest have been transformed into 'ethnic' or 'communal' problems (Hasbullah 2004). For example, the lands belonging to the displaced Muslims of the North have, during their years of absence, been settled by Tamils, some of them themselves displaced in the various conflicts. Under the Law of Prescription which gives ownership of land to any person who occupied it for over ten years, many Muslims fear they have lost their property. At the same time, it ensures apprehension and reluctance amongst Tamils in the north regarding the return of Muslims, and in the few cases of Muslim returnees there have been considerable tensions over how to handle the 'land issue'. Moreover, the war had resulted damaged property and the intervening years had seen many of these abandoned properties looted or taken over by squatters, themselves displaced by the war. Similarly, loss of available land and resources is one of the factors fuelling anger amongst local Puttalam Muslims against the displaced living amongst their midst.

This link between the local interpretations of 'small-scale' localised events, a general process of communalisation of politics, and large-scale incidents of communal violence is what Paul Brass presents so convincingly in his book *Theft of an Idol* (1994). His detailed study of the interpretations and contextualisations of five incidents of violence in North India indeed

suggests that everyday events are likely to be mined for their potential to benefit the interests of various actors and groups – be they politicians, criminals, local village leaders or persons of status and influence in the community – and that where such potential is detected, there is a possibility of instrumentally using the prevailing political and public sentiments to further strengthen their positions, even if the cost of such action is violence. An interpretation which emphasises the communal aspect is deemed necessary in most cases in order to effectively mobilise group action, as can be seen from the previous accounts, both in the incident where Tharanga was injured and in the latter one when the gifted temple land became a case of contention. The national and local discourse of politics and popular scholarship of Sri Lanka makes it easy for those so inclined to channel such tensions into communal ones.

How economic and political tensions can become communal ones

I had been informed of the tensions between the local and displaced Muslims when I first came to the area some years ago as a local consultant reviewing the psychosocial impacts of a socio-economic programme for survivors of violence. But the implications of such tensions became clearer in my interview with Giyasuddeen, a 56-year-old shop-owner who had formerly been a fisherman from Mannar. He had arrived in Puttalam with his wife and three young daughters with only three thousand rupees in his pocket, forcibly displaced by the LTTE as refugees. They had initially lived in a tent on the land of a kindly local Puttalam family. The displaced were likened to the Mujahirrin, i.e. those who fled with Prophet Mohamed to Medina following persecution in Mecca, and were treated, Giyasuddeen recalled, with great hospitality and sympathy by the Puttalam Muslims. The plight of the displaced Muslims had captured international and national attention and within one month of the displacement, the Sri Lankan government was persuaded to provide assistance in the form of funds for building welfare centres (i.e. camps for displaced people)

and the distribution of food rations (Brun 2003, 2010). When the first welfare centre opened, Giasuddeen and his family had moved there; but the conditions of the camp were worse than they had anticipated. The temporary hut in which they lived was prone to flooding and there were not enough toilets, bathing facilities, electricity or water lines for the camping families. The deplorable conditions of the camps have also been documented elsewhere (Hasbullah 2001).

The biggest obstacle for the displaced was finding work and regular income. When he had lived with the Puttalam family, Giasuddeen had gone fishing with groups of local and displaced men. But when they moved into the camps and received regular supplies of government food rations, the invitations for joint fishing expeditions dried up. The aforementioned fishing restrictions placed on the displaced Muslims included types of nets they were allowed to use and times they were allowed to fish in the lagoon, causing much difficulty. Giasuddeen explained how the nets were unsuitable to catch the more profitable types of fish, and captured only small quantities of the other types. The income from fishing was inadequate, and Giasuddeen together with some of the other similarly affected fishermen had approached the local fishing societies to renegotiate these terms. To their shock, the interaction was marked with strong recrimination and resentment from the locals. Their opinion was that displaced Muslims did not need the income from fishing or other jobs as much as they did because of the fairly generous government food rations and free shelter.

This opinion distressed him, Giasuddeen told us. His feelings of gratitude for the first instances of help from Puttalam residents evaporated into subsequent feelings of anger and betrayal. He had felt that the residents did not understand the difficulties with which they lived in the camps nor could they comprehend the everyday sorrow of dispossession. Part of the problem lay in the local Puttalam attitude towards education. Giasuddeen wanted to send his children to school and therefore needed the additional income. The Puttalam

Muslims, he explained, had not valued education until the arrival of the Northern Muslims, a viewpoint also reiterated in some studies (Sorensen 2008).

For Giyasuddeen, the most serious issues began when the Puttalam fishermen started to harass them, damaging their nets and stealing their bicycles. He, with others who had also had their possessions stolen, had approached the local mosque committee and had asked for mediation. The members contacted the Puttalam Grand Mosque which dealt with all committees in the district, and subsequently both sets of fishermen were asked to a special meeting where the locals had been reprimanded for stealing. Giyasuddeen had originally felt reassured by the event but a few days later, they were overtly threatened by a group of local fishermen that future fishing permits would only be granted to non-troublemakers. This encounter had ended in blows. The incident had severely eroded his belief that the mosque members could resolve the communal issues. As proof of this, Giyasuddeen pointed to the fact that there had been no compensation for the loss of nets and bicycles and that discriminatory fishing restrictions had remained in place. In talking about these shortcomings of the respective mosques, Giyasuddeen reflected wistfully that they should have been able to reach a resolution peacefully because they were “all Muslims”.

With the loss of his fishing net, Giyasuddeen searched for other venues of work. He had finally found a job labouring in the salterns because he agreed to work for a lower rate than was usually paid. Although Giyasuddeen was not aware of this, in agreeing to this rate, he contributed to a prevailing perception that displaced Muslims could afford to work for less because of their free food rations (See Brun 2003). Poorer locals lost jobs to displaced Muslims, fuelling resentment. Working at the salterns were the hardest days of his life, Giyasuddeen said – the bags were heavy to lift and he worked from early morning till six in the evening. The daily pay was lower than what he would have earned fishing, and he soon began to work during the day and fish in the evenings. His wife took up work in a small

snack-producing factory. With income from these various activities, Giasuddeen opened a small shop in the camp and quit his saltern job. At first offering various basic groceries and home-made food items, he was soon able to generate enough income to support his wife's migration to the Middle East as a domestic worker. By the time she returned three years later, they had accumulated the money needed to buy land outside the camp.

It was important, Giasuddeen explained, to move out of the camp at a social level, because the social conditions within the camp had quickly become a cause for serious concern for many families. Privacy was limited and this led to an increase in incidences of child abuse, incest and pre-marital sex (also see Hasbullah 2001). In addition, young – and some older – married couples chose to book rooms in nearby hotels for sex because of the lack of privacy in the camps. This solution was jointly crafted by the mosque committee and locally active NGOs as a means to arrest widespread inappropriate exposure of young children to sexual activity within the camps. This solution was allegedly misused by unmarried couples, leading to unwelcome speculation about the prevalence of sexual activity, whether pre-marital, marital or extra-marital, in the camps. This development caused much embarrassment amongst the displaced Muslims. At the same time, young people, especially young unemployed men, began to form criminal and violent gangs. Alcoholism and the drug trade increased. The camps, and more particularly its residents, began to be reputed as having low standards of behaviour. Rather than pointing to the camp conditions where some of the blame for the rise in these behaviours surely lay, some Puttalam Muslims unfairly alleged that these behaviours were evidence of the general immorality of the displaced Muslims whose 'customs and moral standards' were lax and not properly 'Muslim'.

These allegations offended and angered the displaced Muslims. Some of them considered themselves to have been of a better-educated privileged background coming from a context where education and resources had been comparatively substantive than those in Puttalam.

These circumstances had led some Northern Muslims to the conclusion that Puttalam Muslims were comparatively ignorant and illiterate until their arrival, at which educational standards and attainments amongst local Puttalam children had also shown advancement. Yet their kindness in the first months of their displacement had endeared them. This kindness had been partly generated by their shared religious identity and it was the main link between the groups – and the main reason for Puttalam having been the destination of choice for the Northern Muslims at the time of their displacement. Therefore, to be derided on this one shared and valued identity was deeply upsetting. It signalled an act of social distancing and a cheap way, in the eyes of many displaced Muslims, of gaining the moral upper-hand.

More problematically, these allegations uncovered the deeper issue of hitherto-unmentioned regional differences between the groups. Although the overarching initial connection was of a shared religious identity, such differences quickly re-asserted themselves in the general hostilities and competition over scarce resources – not only between the Puttalam and Northern Muslims but also between Muslims from different Northern districts. The tensions between Jaffna and Mannar Muslims had arisen over time due to perceived inequities between the two groups. Jaffna Muslims, who were based in the most developed district of the North, were able to utilise their backgrounds of higher levels of education, professionalization, prosperity and urbaneness to organise themselves better, move out of the camps and make different lives for themselves. Muslims from other districts often resented this ability of the Jaffna Muslims, deriding them as selfish whereas the Jaffna Muslims countered these allegations using the ideas of jealousy and laziness.

It was the disparagement of their shared group identity that caused such deep hurt to the displaced Muslims. Not only did it directly attack one of their own primary identities – their Muslimness – but these attacks were based on regional differences, an aspect many had expected to become less significant in comparison to their shared religious identity. Despite

these allegations, similar social issues of criminal violence, sexual offences and the drug trade were increasing amongst all communities in Puttalam, though perhaps not quite to the same degree owing to different socio-economic circumstances. These developments could be partly attributed to some of the significant economic shocks suffered by a number of Puttalam industries in the mid-1990s. Along with decline in the fisheries, the shrimp industry established in the 1970s and which had rapidly expanded in the 1980s collapsed in spectacular style in the mid-90s as a result of an epidemic of white-spot disease, and as many as two-thirds of the shrimp farms were closed – a major blow to the industry and a sharp rise in unemployment and bankruptcy. Migration – one of the only other viable forms of guaranteed employment – placed additional pressures on married and family life and led to their breakdown, just like elsewhere in Sri Lanka.

Under these circumstances, the displaced Muslims felt that they did not deserve to be identified as a sole ‘morally suspect’ group. They were aware that such allegations jeopardised their general standing and reputation in the community and would affect their relationship with the local authorities – just as Wiyaratne’s neighbour’s elopement was seen to have a detrimental effect on how the LRC officials treated the family in the example earlier from the central highlands. Thus it was seen as greatly important to curb the circulation of such rumours and allegations. As will be seen the drive to monitor personal and social conduct was most evident in the north-western sites. In fact this concern with moral and intimate behaviour, such as incidents of pre- and extra-marital relationships, marital breakdown and sexual assault, dominated the accounts that people shared with me from the north-western site, comprising a third of the proportion of problems in Periyannagar and Kundruvillai. The creation of the settlements outside the camp (like the one Giasuddeen and his family moved to) provided an opportunity for displaced Muslims to set up systems to observe and control behaviour – systems that were widely regarded as

containing the problematic behaviours but in fact for many families, were a source of difficulty.

Intrusive monitoring of ‘proper’ behaviour

In 1995, the Sri Lankan government created a scheme to resettle – or relocate – displaced people. This scheme had been the result of increased Muslim political clout within the government where the Sri Lanka Muslim Congress (SLMC) teamed up with the SLFP to form the People’s Alliance coalition which had then gone on to win the 1994 presidential elections. Mindful of the allegations of immorality against displaced Muslims, special attention was given within these newly emerging settlements to develop a system which would monitor the behaviour of the residents and curtail any conduct that might bring disrepute to the settlement.

Giyasuddeen’s wife’s return to Sri Lanka had coincided with the introduction of this scheme and they bought a small plot of land in what was emerging to be the Periyannagar settlement. They were unable to build more than a temporary hut on the premises, but the resulting privacy and the ability to have a small home garden and some live poultry had been a welcome change from the earlier cramped camp conditions. In Periyannagar, Giyasuddeen informed me that a mosque trust board and a women’s committee had been quickly established to oversee and resolve issues within the village. As one of its more well-to-do and prominent members, Giyasuddeen had been elected as an additional member to the trust board tasked with the responsibility to ensuring that disputes were resolved amicably and that wrong-doing was punished in a reasonable and fair manner in keeping with Islamic principles.

The people, as Giyasuddeen explained, were bound to the mosque management because this ensured the best possible solutions for the village. Involving outsiders, and in particular

local residents, in the resolution of any disputes amongst displaced Muslims would be problematic, he stated, because of their resentful attitudes and jealousy about the increasing wealth of displaced Muslims. They would therefore seek to undermine the position of the displaced Muslims. To minimise the possibility of this occurring, the Periyannagar mosque trust board imposed a rule that anybody who took a problem to the police, involved any other local group or took any legal action without the approval of the committee would be fined a minimum of two thousand rupees. Alcohol and drug users were also fined a similar amount, while those accused of trading or selling drugs were fined a sum of five thousand rupees. Giasuddeen believed this to be fair and in the best interests of the Periyannagar community. He explained that it ensured village disputes did not unnecessarily 'go outside' the community. If the involvement of police or any other local group were required, they would be contacted by the mosque trust board which represented the interests of the village as much as it did the interests of the individual.

In response local villages too began to incorporate these elements of social control in the mandates of their mosque trust boards, aimed towards curbing what were considered to be immoral acts within their villages and limiting the extent to which villagers could approach the police or other 'outside' authorities without due approval by the boards. Kundruvillai, the local village bordering Periyannagar adopted a similar approach one and a half years ago. The mosque trust boards – both in resettlement and local villages – were regarded as a key community institution and commonly targeted by non-governmental organisations for institutional strengthening.

In both villages, the respective mosque trust boards appointed neighbours to observe certain households to confirm or disprove suspected or reported cases of illicit sexual activity. This sometimes led to action being taken against men or women who were reputed to transgress accepted moral behaviours. For example, requiring those accused of illicit sexual conduct to

appear in front of the mosque trust board for inquiries, and subsequently being compulsorily made to marry seemed common amongst the accounts. Mariyam, who earlier shared her experience of having similar allegations being done against her, was thankful that they had managed to overcome the problem with relatively little impact on their marriage.²⁰ She recognised that this was not the experience of most women about whom allegations were made. In a number of cases, the men had divorced their partners following such allegations. In two accounts, evidence against philandering husbands had led to their being forced to marry the women with whom they were alleged to have the affair, which had led to the dissolution of the first marriage by request of the first wife or her family and shortly afterwards the dissolution of the second marriage as well. Some of these unions lasted but most separated within a year of the event often after the birth of the first child. In fact these consequences constituted a number of the problems that informants from the north-western sites recounted. Despite these complications brought on by the interventions, all informants were clear that protecting the reputation of the village as ‘properly Muslim’ was of utmost strategic importance.

Yet, there were dissenting opinions amongst informants about what was the ‘proper’ Islamic approach to adopt – should the couple be merely punished, i.e. whipped with a hundred strokes, or should they be whipped and compulsorily married? Some believed that it was lack of true Islamic knowledge which caused the mosque trust board and various families to force a couple to marry – in their view, Islam prohibits forced marriage. Others felt that the required practice was indeed to make them marry each other. These opinions about what was the ‘proper’ Muslim approach were not formally debated within the community. The mosque proposed what they saw as appropriate action, and families tended to agree or disagree on a more private basis.

²⁰ Interview 3.16.7

A recent trend in Kundruvillai complicated this matter of compelled marriages even further. Three of the accounts shared with us involved the abductions of young women and girls by men interested in marrying them.²¹ One girl was on her way to school, whilst the young women were fetching water or attending to other household chores when they were abducted. In two of the cases, the mosque trust board required the family to marry the abducted to her abductor because she had been in his company without a reliable chaperone for a significant period of time – from one to three days – and marriage was therefore, in the view of the mosque, mandatory.

However in the third interview, the brother of the abducted girl, Yasir, spoke strongly against the practice and described how he and his family had intervened to ensure his sister was not compelled to marry her abductor. When their 17-year-old sister had been located at her abductor's sister's house two days after she disappeared on her way to school, there was considerable pressure to marry them. Yet because he was a known drug user and troublemaker Yasir's family – which appeared better educated and more resourceful than the other two families had not wanted the marriage to go ahead. They had made a strong case against the marriage to the board and had also managed to persuade the abductor's sister to speak out against his general conduct and behaviour. They had successfully persuaded the mosque trust board to abandon their favoured approach of marrying women to their abductors in their case. He also expressed concern that abduction could be instrumentalized by young men if families or the young women in question did not accept their proposals.

From these and other accounts in both Periyannagar and Kundruvillai, it was possible to discern a growing discourse about how to be, and more importantly demonstrate being, a good Muslim in accordance with what they saw or were being encouraged to see as the defining traits of 'Muslimness'. This obsession with demonstrating moral communal

²¹ Interview 3.14.11; Interview 3.22.7; Interview 3.27.10

superiority – as articulated through adherence to Islamic principles and codes of conduct – could be partly located in the contested and competitive relationships between local and displaced Muslims – and it could also be traced to the many national and international schools of instruction to which the Islamic scholars of that community had been exposed. Many informants attributed problems to result from lack of religious knowledge, poor levels of faith-directed behaviour and the failure to implement important Islamic regulations which governed private and public life. Adherence to these structures and lifestyles was particularly important in negotiating with local authorities such as the police, the GN or the various mosque trust boards. Particularly when dealing with the Puttalam Grand Mosque trust board, failure to impose a ‘Muslim’ way of life on their communities hampered the board’s credibility and could negatively affect the decision regarding outcomes. Similarly, because the Muslim political party was based on religious identity, demonstrating – performing rather – membership in that (religious) group became particularly important. This indicated that whilst some of the debates were conducted in the register of ‘proper’ Muslim behaviour, they were aimed to secure greater leverage from local authorities or political leadership.

While not as forcefully evident in the other sites, this concern with moral conduct was discernible in the accounts from the southern site and from that in the central highlands. Such concern primarily revolved around conduct in relation to sexuality and family life (especially for women and girls). Any suspected or actual compromise to their ‘innocence’ resulted in stricter, less sympathetic responses from police officers and others who were called in to mediate. For example, in an account I discuss in greater detail in Chapter 6, a woman detained as a possible ‘terrorist suspect’ was deemed at greater risk of harassment in police custody when it became known that she was pregnant with her fiancé’s child, and as such, could be seen as sexually compromised and her ‘innocence’ suspect. Wijeratne’s reference to how the wife’s elopement damaged the family’s reputation and their chances of

success in the land dispute he had with that family also suggests that the ‘taint’ of immoral conduct affects has an enduring effect on the respectability of a family, and compromises their chances of a sympathetic hearing by figures of authority. Amarasuriya (2010) refers to this more explicitly in her account of how probation officers in one Department expressed views suggesting, in their opinion, that women and girl victims of sexual abuse and rape were at least partially culpable for their situation and how their responses sometimes reflected this opinion. These practices resonate with the literature on how community honour is vested in women’s bodies and conduct (see for example Batalia 2000 and Coomaraswamy 2003, for a more detailed discussion on this issue). As such, becoming morally suspicious (in ways similar to becoming politically suspicious) rendered individuals, families and perhaps even entire communities vulnerable to, at the very least, unsympathetic and, also possibly, abusive actions on the part of those whose responsibility it was to intervene, such as the police or other state authorities.

On the nature of disputes and problems and their implications for a ‘just’ outcome

My first thought on analysing the list of types of problems people shared during the research (for example, migration, under- or unemployment, poverty and debt, domestic violence, marital breakdown, or drug and drink addiction) was that this list seemed strangely familiar. I realised that it closely resembled lists I had seen generated in participatory development exercises where participants were asked to list the most pressing ‘community problems’. The detailed accounts however provided me with a different perspective – how these ‘community’ problems actually translated into real life experiences and difficulties for individual people and for families. Also, that these disputes and problems were as Roberts (1974) state, ‘socially definitive’ moments with real-life enduring consequences and all that it implies became much more real to me. The so-called ‘community’ problems are in fact

deeply personalised, complex, evolving, enduring and multidimensional stories of individual persons and their families, embedded in larger social, political, and economic factors, influenced by and, in cumulative or acute ways, influencing the local and national political agendas. They operate simultaneously on multiple planes and are integrally embedded in social relationships responsive to changes in social context – whether local political dynamics or broader national agendas. These features of a problem or dispute make intervention and resolution a much more complicated affair, with broader social implications to the outcome. This makes achieving a sense of ‘justice’ a much more complicated and complex process. It requires us to pluralise the justice-seeking process and acknowledge that the process itself has several strands which need to come together to produce an outcome, ‘just’ or otherwise. As a practitioner, I became very aware of the inadequacy of stand-alone narrowly-conceptualised interventions which failed to consider these aspects.

In all three sites, problems arose out of and were very much driven by the immediate social relations. These social relationships were shown to be influenced, on the one hand, by the personal characteristics of other protagonists and, on the other hand, by various political aspects of the context – i.e., the social relationships to those in power and status, whether derived from class, caste, ethnicity, or religious identities, or from wealth and connections to other figures of authority and power. At the same time, the problems and disputes were very much a product of the broader discourses and agendas which shaped the social (i.e. including the political and economic) context. Sally Falk Moore’s (1977) assertion that different elements in dispute settlements reflect the different interests of various levels of social organisation and that these are being simultaneously negotiated and expressed during the dispute is very evident in the accounts above. Where social differences exist, national perceptions and discourses about these differences significantly affect the evolution, management and outcomes of problems and disputes. In the southern sites, everyday social relationships and struggles over resources and status give rise to tensions that play out in

problematic ways. The ethnic differences in the central sites, and the outsider status in the north-western sites, have compounded these same problems with additional dimensions of the political.

Thus, problems are experienced as both deeply personal and highly political. In each account, what at one level is an extremely personal event and set of circumstances is at another level an account of larger forces at work. Therefore, the outcome often speaks to and says something about the broader social framework in Sri Lanka. At each point of the story where the different interests compete and impinge upon each other, it is often the weaker, more vulnerable party that loses out – resulting in accounts such as Ajantha's, with their long-endured histories of personal defeats, hardships and humiliations. Because of this, the way these problems and disputes were managed and the subsequent outcomes held considerable meaning for the disputants, indicating to them and to others around them something both symbolic and concrete about their own social position and the prevailing social order in the country. For this reason, we can see that disputes and problems and their outcomes are not events of disinterest, obviously not to the disputants themselves but more interestingly neither to the others around the disputants. For, in such events and their consequences is a potent reading of what is possible, and what not, in the realm of power dynamics and renegotiation of the hegemonic social order. This holds true not just at the local level, but also more broadly at national and international levels. If, as Moore argues, disputes encompass 'immense fields of action' (2001:95), then it is possible to read into and from disputes and their outcomes traces of the shifting local, national and global processes – from issues of poverty, domestic violence and migration, to impacts of the ongoing armed conflict, humanitarian aid for displaced populations, or national political power struggles.

No wonder then there is considerable pressure and interest to shape the outcomes to such seemingly everyday disputes and problems. In this context, reasons for the 'choices',

‘manipulations’ and efforts at ‘social control’ by third party interveners as much as by the disputants themselves that Moore talks about in her review article become clearer (Moore, 2001:103). What is often overlooked in the legal empowerment concepts and approaches or in development literature on legal reform is that those who hope to shape the outcomes towards fairer more just outcomes themselves become participants in the political struggle over power and hegemony and as such are subject to the same forces, limiting their ability to work ‘objectively’ and outside the process which they intend to influence. In the next chapter, I examine who intervenes in the disputes and problems in the three different sites and equally importantly, how they intervene.

Chapter 4 Solving Problems

In this chapter, I look at the actors involved in the process of problem management and resolution, as described in the accounts from each site. Some of the actors – for example, specific community groups such as the coir-workers’ committee or the peace awareness committee – were specific to certain sites, whilst others representing state institutions such as the police or state administration played prominent roles across two or all the sites. I have selected only those actors which had the highest number of mentions by informants in each site. More often than not, there were multiple actors involved in each dispute settlement and problem management, each actor bringing a different dimension to the process and each instance of new engagement having the potential to shift the balance of powers between the disputants.

In the first half of the chapter, I present the different actors and institutions and provide a brief background to each, highlighting the way social, historical and political contexts influence the emergence and endurance of different actors in different sites. In the second half of the chapter, I focus on the dynamics of dispute resolution and attempt to explain why a particular intervention seemed to work or not. I draw informants’ references to the characteristics of the institutional actors, formal and informal institutions and/or the networks in which they were embedded. Through selected examples, I illustrate the complex interrelationships between formal, semi-formal and informal institutions and actors in influencing the outcome of a dispute. I conclude by pointing out how the process of problem solving is highly contextual and is influenced by history, politics and geography to varying measures.

Local groups and committees in dispute settlement and problem management

The Rakmulla coir-workers' committee

In the tsunami-affected village of Rakmulla, the accounts suggest that the coir-workers' committee of 15 members shot to prominence in the aftermath of the disaster on the strength of their organisation and knowledge of the affected families, and the post-tsunami resources given to them by Siyath Foundation. The coir-worker network proved a useful conduit for the distribution of immediate relief items and work began in the very first days whilst those displaced by the tsunami were still being sheltered within the temple compound. Prompted by Siyath, the committee members visited the coir-workers and their families, recorded losses and needs, and reported these to the GN, other state officials and to potential donors. The committee comprising of women selected from the coir-making field and previously appointed to oversee the supply and sale of coir, turned its hand towards managing vast amounts of incoming tsunami-related relief and resources. They were responsible for the distribution of the goods and relief items on receipt. As the months passed, the committee expanded its savings programmes to cover individual applications for loans and grants for the establishment of small enterprises, such as Prema's 'home-shop' mentioned in the previous chapter.

In the first year post-tsunami, the committee members decided that the aid they received would only be directed towards its members, a decision later reversed by Siyath Foundation with support from the GN, neither of whom wanted an exclusive focus on coir-worker co-operative members for the tsunami aid. Nonetheless in this interim period, many Rakmulla residents, especially those affected by the tsunami took up coir-work, partly – if not wholly – driven by the desire to become eligible for aid. As a result, the membership trebled in the months following the tsunami. These new members, and later on, the addition of non-

members eligible for aid posed new difficulties for the committee. For example, with no prior relationship to the families assessed and amidst growing demand for limited resources, the committee members' assessment of needs required greater rigour and their selection process greater transparency than were being exercised.

Complaints were raised about how aid was distributed. These concerns reflected a growing national and international concern with the accountability of tsunami aid relief efforts. To cope with their burgeoning responsibilities, Siyath Foundation provided committee members with a series of short-term training programmes on a range of topics from finance management, needs assessments, and human rights, to availability of state benefits, and legal intervention. Despite these efforts to ensure fair access and distribution of resources, almost half of the informants who spoke about tsunami-aid related difficulties alleged that the committee members had discriminated in favour of those whom they knew, citing this as the main reason for their exclusion from aid. Even amongst those who expressed their dissatisfaction, it was nonetheless acknowledged that the committee had responded actively and had achieved considerable significance in the community for their efforts.

Apart from the dispensation of aid and advice – and in addition to their initial role as a promoter and protector of coir-workers, committee members began to take up other social causes in the village. Using the post-tsunami funds, they had established a free pre-school, organised against domestic violence and towards reducing the sale of illicit liquor and drugs in the village, and encouraged self-employment and training amongst unemployed young people and women. These interventions brought them into regular collaboration with the then GN, the chief monk of the temple, and the Officer-In-Charge (OIC) at the local police station. These contacts further cemented their growing reputation within the village. In view of such successes, it is unsurprising then that the coir-workers' committee featured as a key intervener in about twenty per cent of all Rakmulla stories.

The temple society of Mahagoda

The more long-standing dispute settling institution in Rakmulla and Mahagoda was the temple society which was made up of a group of 12 well-to-do businessmen and other well-regarded educated local residents, some of whom the villagers referred to as the ancestral or traditional elite. These members formed a loose-knit network, and the society itself was quite unregulated, especially in comparison to the other local groups encountered in this study. Its main focus was on the maintenance of the temple, and the organisation of the annual festivities in the village. However, it was evident from the stories that the individual members were regularly approached for advice and assistance during disputes, with one in ten of the accounts from this site having involved intervention from one or a group of members.

Members of the society also took on some responsibility for protecting and preserving the particular religious and caste characteristics of the village of Mahagoda. For example, there had been protests against a recent attempt from a Colombo-based Christian group to build a church in the vicinity, including an attack on the half-built church. It was alleged that temple society members had been instrumental in encouraging the attack, citing the initiative as a covert strategy for religious conversion. In a similar vein, members of the temple society were also implicated in agitation against the placement of fisher-families in tsunami housing built on village land, vehemently claiming their unsuitability and ineligibility.

The society's focus on preserving religious – and even caste - homogeneity could perhaps partly be traced to its history. The temple society was the continuation of an older institution of Mahagoda – a progressive patriotic Buddhist society initially established in 1935 by keen religious revivalists associated with the pro-independence movement (see Matthews 1988 and also Roberts 1974 for a more detailed description of this time period). The society was comprised by elite and prestigious members of society. At the time, the society had been

instrumental in building public wells, campaigning for the moral, social and economic development of the village and establishing one of the first Buddhist village schools. It had become inactive shortly after independence, but was resurrected in 1978 in response to, as I was told by a temple society member, “the troubles in the North” – an oblique reference to the surge of separatist sentiment among Tamils in the North of the country at the time. The current members, whom I interviewed, showed a fierce pride in the institution, and two noted their family’s involvement in its initial formation. However, the significance of both the coir committee and the temple society as mediators appear in recent times to have declined (the possible factors leading to this are examined later on in this chapter)

The peace awareness committee of Mahamalwatte and Podimalwatte

The peace awareness committee in the central sites of Mahamalwatte and Podimalwatte was a joint initiative set up by the Grama Seva Niladhari and the Kundasala Community Development Fund, comprising close to 15 members about a half of whom were women. It was intended as an instrument to build inter-ethnic harmony in the face of entrenched and escalating tensions between the different communities living in the area. The prime tasks of the peace awareness committee were to address disputes and problems in the village early on before they escalated into violence, to channel resources fairly, and to facilitate development activities in the village. They worked under the GN’s authority and were trained through the partner organisation on various conflict mediation, legal, and human rights issues. That a fourth of the reported problems were tackled by the committee at the direct request of the people and independently of the GN, was a testament to the considerable credibility they had achieved under his guidance.

The members of the peace awareness committee were selected by the GN (more recently with additional input from other committee members) on the basis of their interest in village development, their general conduct, and their commitment to issues of equality and rights.

The composition of members also suggested careful thought to representation and diversity, with members from every ethnic group, a range of age groups, and a mix between experienced, well-educated and senior members. To further symbolise their multi-ethnic identity and mandate, the committee conducted their weekly meetings at different sites, one week at the Hindu temple, the next at the mosque and sometimes at the more communally-neutral community centre. Although as attested to in the previous chapter ethnic tensions still existed in the communities, there were more joint activities and inter-ethnic social relations than ever before. The number of cases going to the police or the courts had also reduced significantly since their interventions.

In addition to mediating in disputes, the committee had been pro-active in addressing some of the key grievances of the different communities. For example, they raised funds in order to have a translator at the post office and at the Government Agent's office. Some of the members had negotiated an agreement to conduct Tamil classes at the Sinhala medium school, and vice versa. Informants also described how committee members had been active in addressing other social and economic problems in the villages, improving village infrastructure from crèche services to water supplies, encouraging children to be sent to school, discouraging young people from taking up drink or drugs, and attempting to reduce the number of mothers of young children migrating abroad in search of work. These measures further raised the esteem of the peace awareness committee within the villages, especially in Podimalwatte.

The mosque trust boards and women's associations in the north-western sites

The mosque trust boards were the most notable mediator of problems and disputes for the communities in Periyannagar and Kundruvillai. The local mosque trust board in the resettled village of Periyannagar had formed in conjunction with the establishment of the village, and its composition by consensus was carefully constructed to ensure that all families in the

village were linked to the board. There were 5 permanent members of the board, who discussed and resolved the problems of the village, but a further 10 members served as additional members who could be consulted to ascertain the nature of a certain dispute. These 10 members were selected because they as a group were related to all the families of the village. This meant that each family had a representative to serve its interests and in matters of disputes, the additional members possessed inside knowledge of the various interests and concerns of the different families and could constructively advise the board. In this way, the mosque trust board was seen to act impartially, ascertain issues fairly and give a judgement which would benefit all the society.

In contrast to this careful composition of the Periyannagar local mosque trust board, the Kundruvillai one comprised of 8 members who were elected every 2 years by the men after the evening prayers. The Kundruvillai local mosque trust board, whilst in existence for some considerable period of time, had only been revived into a functional form eighteen months ago in response to growing interest amongst the younger generations of Kundruvillai to develop the village. Prior to this, the mosque trust board had been a mere functionary, with the main aim of ensuring the daily running of the mosque. However, the more recent changes revealed a tendency towards forming a stronger more social-interventionist structure from within the mosque. The trend to revive local Puttalam mosque trust boards and model them on the more authoritative-style trust boards in displaced communities had coincided with an influx of aid to local communities amidst heavy criticism of the long humanitarian and development focus on the displaced. There had been efforts on the part of local NGOs to build capacities amongst the local Puttalam communities, and assistance was made available to revive and train many defunct local mosque trust boards. Kundruvillai's newly revived mosque trust board received some of this attention naturally. I was also told by the president of this local mosque trust board that increasing numbers of problems were being directed and handled by them. In both Periyannagar and Kundruvillai the mosque trust boards

dealt with similar types of problems – most notably issues relating to allegations of pre-marital sex and infidelity, use of alcohol and drugs, allegations of theft, default on loans, and other interpersonal grievances or disputes that could potentially result in enhanced tensions between the local and displaced communities.

The mosque trust boards, or mosque committees as they have sometimes been called, are indigenous village institutions in most, if not all, Sri Lankan Muslim communities and for the most part require little financial assistance. They come under the Department of Muslim Religious and Cultural Affairs. Although the Wakf Act No 33 of 1982 (also known as the Mosque and Muslim Charities Act) states that the Wakf Board is responsible for the appointment, suspension and removal of the trustees of mosques and Muslim shrines, in practice their members are appointed by the community, mostly by men after the Friday prayers as in the Kundruvillai case. Complaints and allegations may be submitted orally or in written form. Each committee functions independently and their functionality and engagement in the community varies in different localities. Their role in local dispute settlement has however also been noted elsewhere, especially in multi-ethnic areas in Sri Lanka where non-Muslim families would also bring disputes to the mosque trust board if the other party was a Muslim (Raheem and Gosselin 2003).

The Grand Mosque was the ultimate ‘inside’ mediator at district level on disputes between local and displaced Muslims. This role was sometimes seen as useful, especially when seemingly intractable disputes and conflicts occurred between members of the local and displaced communities, but at other times, they were seen as high-handed and somewhat arrogant in their interventions – especially when people appealed to the Grand Mosque over decisions made at the level of the smaller mosque. Such instances were rare but nonetheless when they did occur, there was an inquiry conducted by the Grand Mosque into the decision-making process and outcomes of that particular dispute and new hearings could be held,

which challenged the authority of the smaller mosque. When matters could not be resolved over what the Islamic approach to a disputed matter, the Grand Mosque sometimes consulted with the board members of the All Ceylon Jama'iyyathul Ulama, the apex body of Muslim theologians in Sri Lanka. On disputes related to marriage and divorce that mosque trust boards find difficult to resolve, mosque trust board members may also consult a Qazi judge (see section on courts).

Because the local mosque trust boards in Periyannagar and Kundruvillai were comprised only of men, the women's associations played a particular role in both villages. Whilst the executive positions were elected by the members of the association, membership remained open to interested women from the village. The women's associations mostly concentrated on enabling small-scale women's income generation activities and loan facilities for self-employment. One member of the association in Kundruvillai provided a short history of the association; she herself was the daughter of one of the influential wealthy men of the village who had founded one of the local schools and had also been instrumental in various village development schemes. She had been involved in promoting women's education and social participation since the 1960s, as a young woman and these efforts had gradually evolved into a loose formation of a women's group. Its executive members occasionally engaged in social work and in resolving women's problems, including cases of domestic violence or non-school going children. They also undertook to support village development activities. It had initially carried out its own fund-raising activities and had been also bolstered by women's savings programmes. In recent years however, there had also been some small support from the state (for entrepreneurial activities) and also assistance from NGOs to improve women's mobilisation and organisation within the village. The president of the Kundruvillai women's association described how it had been instrumental in advocating for the expansion of the local primary school. Similarly, the women's association of Periyannagar had been the primary advocate for the establishment of proper

garbage removal and waste disposal systems in the resettlement village – an incident positively mentioned by a number of informants, including the mosque trust board members.

The relationship between the women's association and the local mosque trust board was not always an easy one, especially in Kundruvillai. While the long collaboration between the Periyannagar mosque trust board and the women's association had resulted in better recognition of the relative strengths and capacities of each, the one between the recently-developed Kundruvillai trust board and the women's association was more problematic. The president of mosque trust board described the work of the women's association as "dealing with nonsense problems" and said they did not often work together, unless it was an important problem. By 'nonsense' problems, he meant incidents of domestic violence, fights between children that resulted in disagreement and hostility between their respective parents, and other personal grievances that led to arguments and disputes between women in the community.

State representatives and institutions involved in problem-solving process

The Grama Seva Niladhari

The extent and nature of their involvement varied across the sites; the biggest differences I noted were in the roles played by the GN, the police, and local groups. For example, the GN in the central sites featured in nearly one of every three stories whilst the GN in the southern sites did so in one of every ten. In contrast, the GN was barely discernible in the two north-western research sites, appearing in only two from the sixty-eight accounts collected in Periyannagar and Kundruvillai. Even the cases of violence and assault that were handled by the police were done so in conjunction with the GN and the courts in the central and southern sites, but in the north-western sites neither the courts nor the GN had a prominent role, rather

cases such as these were handled predominantly by the local mosque trust board and the Grand Mosque of Puttalam with occasional support provided by the police.

In everyday administrative matters, GNs are generally powerful figures. They collect household level information, manage voter registration, and process (though not issue) documents pertaining to the identity and registration of citizens. They are called upon to endorse the information provided to the state by citizens and households and, when occasion demanded, furnish letters of support and approval to accompany applications for different services (in these accounts, for example, to endorse eligibility for tsunami aid, planning permits or the installation of electricity). GNs also facilitate the replacement of lost national identity cards and birth certificates – a very important task as the identity card was a key document needed to access most state services or those of other institutions such as banks. Additionally, GNs mediate in disputes over land and in those involving violence, assault and harassment. Sometimes, when families do not want to directly confront neighbours over irritating behaviour (such as playing loud music at inappropriate hours or blocked access to a public footpath, etc), the GN is expected to bring up the issue in an appropriate manner with the relevant party. For these reasons, an effective GN is seen as an indispensable asset to a village, a corrupt or inefficient one especially deplorable (as will be seen later in this chapter). The accounts provided by the informants included many problems featuring the need for services from the GN. In a few cases, the dispute or problem actually was to do with the GN – delays in replacing lost national identity cards, refusals to endorse applications for electricity or planning permits, etc.

The position of the Grama Sevaka was formed in 1963 under ideologically-driven reforms of the SLFP which wished to retire the position of headmen claiming the positions were feudal and favoured the traditional elite (Robinson 1975). The Grama Sevakas (meaning village servant) were to be civil-service graduates, selected on merit and trained by government

officials. Their duties were very much the same as those of traditional headmen yet in the interests of impartiality, they did not represent their own villages but were transferred to a new village every three years. The position of the Grama Sevaka was renamed as Grama Seva Niladhari (village officer) in 1990 to bolster their official authority since many GSs resented the title which they felt were demeaning to their status (De Silva 1993). GNs may serve more than one village in one area, with visiting days assigned to those villages other than the one in which they resided.

The GN reports to the Divisional Secretariat, the lowest of the four levels of the Sri Lankan state administration system, the other three being the national, provincial and district levels. The GN may be assigned additional tasks as required by the Divisional Secretariat. The Divisional Secretariat provides a range of public services to the public, and has therefore been described as the 'supermarket' of government services (Jayasundara 1997:265). It reports to the District Secretariat and to the Ministry of Home Affairs at national level, and this feature represents a key aspect of the governance system. However, instead of one clear line of authority from the centre to the divisional level, GNs have several parallel lines of authority pertaining to different functions, which is confusing for the average citizen as well as for the GNs and for other officials. GNs also sometimes experienced conflicting demands, when those from their designated office clashed with those from local politicians or police officers. This meant that GNs themselves were required to play a careful negotiating role in the way they carried out their tasks and services.

Politicians with links to national and provincial government

Political influence was most evident in the central sites, but they played decisive roles in all three sites most commonly in relation to the allocation of resources, whether for building culverts, installing pipes for water distribution, or improving school facilities and services. In the south, several MPs were mentioned as sources of assistance in everyday disputes and

problems, depending on which ones those informants had connections to or could reliably contact in a difficult situation. In the north-west however, the situation was similar to the central highlands; only one prominent political figure dominated the accounts in each site.

In the central sites, Arumugan Thondaman, the President of the Ceylon Workers' Congress (CWC) and MP for the adjoining Nuwara Eliya District was mentioned by informants in several cases. The CWC of which Thondaman was President was founded by Thondaman's grandfather, Saumyamoorthy Thondaman. Its precursor was the Ceylon Indian Congress (CIC) but, in 1950 shortly after independence and the Citizenship Act which disenfranchised the estate Tamils, the CIC changed its name to become the largest trade union in the plantation sector (Hollup 2004, Sinnathamby 2004). Several leadership rivalries led to breakaway factions, depleting the potential joint bargaining power of the plantations. But CWC remained the strongest of these parties in terms of representation and political recognition, with both grandfather and grandson serving in parliament consequently from 1960 till 1970, and again from 1977 to present times. Although having engaged in occasional strike action to improve their political, living and working conditions, there has been surprising little demand for radical change of the situation of the estate population under the leadership of either of the Thondamans. Rather the trade unions and political parties have been described as ineffective in raising wages, improving the control of estate workers over their own life conditions, or improving their terms of employment (see Hollup 1994).

The policy of the CWC leadership has been to negotiate on a pragmatic note from within the ruling government, a stance of considerable advantage to governments which have generally feared the potential that a strong movement might rouse amongst the economically important but heavily exploited estate population. Not surprisingly then, every government of Sri Lanka has courted the CWC leadership, with nominations for Parliament and appointments

for ministerial portfolios. Critical scholars have also noted that the policy served the personal and professional interests of the CWC leadership because it ensured the continued dependence of the estate polity on political patronage whilst providing the Thondamans with all the political perks and privileges of being an MP and Cabinet Minister (Hollup 1994). For example, Thondaman's grandfather, appointed Minister of Rural Industries Development, was quoted as saying 'it was in the interests of the CWC not to wage struggles to find solutions to our common problems but... to ask for and obtain our rights at cabinet level' (Kurian 1982:89).

In 2008, at the time of the research, Arugumam Thondaman held the post of cabinet Minister for Youth Employment and Socio-economic Development. He was seen as a highly influential figure and held considerable sway over matters of dispute in the estates. Trade union and political leaders had a network of contacts, and commanded knowledge of how to negotiate the systems to advantage favoured individuals and families when required. They were the patrons and brokers for plantation communities, performing a range of duties and services such as providing letters of recommendation, filling in application forms, directly influencing decisions regarding employment, helping them obtain documents such as identity cards or passports, or negotiating with management or tribunals on matters of social security payments or illegal dismissal and suspensions. Such intervention was especially important because workers were often uncertain or uninformed about their rights and entitlements; they depended on the information provided by their leaders and continued to defer to them as long as they were convinced that the leader possessed the essential requisites to influence outcomes. Indeed there is evidence that communities expect their politicians to deliver along these lines – the relationship is one of patronage, support in exchange for access to resources, privileges and power (see for example Korf, Hasbullah, Hollenbach & Klem 2010).

The prominent politician in the north-western site was Rishad Bathiudheen, originally a member of the Sri Lanka Muslim Congress which in coalition with UNP was elected to parliament as part of the opposition in the legislative elections of April 2004. In 2008 he and a small number of the SLMC members left to form the All Ceylon Muslim Congress (ACMC, of which he was party leader) in support of the ruling UPFA, an alliance between SLFP and various other smaller political parties. Rishad Bathiudheen was appointed as the Minister of Resettlement and Disaster Relief Services, and not surprisingly was seen by informants as an influential figure for the displaced Muslim community through his particular ministerial portfolio and his access to the prevailing powers. Similar to the political tactics of the CWC, the stance seems to be to strategically utilise political patronage as a means of advancing the interests of the Muslim community in exchange for political support for the ruling party. In the current cabinet of 2013, Rishad Bathiudheen continues to have a ministerial position as the Minister of Industry and Commerce, a position he has held since April 2010 (www.parliament.lk). There was however considerable resentment both amongst the local Muslim communities in Puttalam and the Sinhalese communities in the Kandyan district over these well-known political figures who offered relatively accessible and influential support to their particular consistencies. Some informants lamented that the displaced Muslims or the Hill Country Tamils, as the case may be, benefited from their close proximity to such political power, and that therefore they had a relative advantage in disputes and problems.

Political influence in the research sites involved both national-level and provincial-level ministers; both Thondaman and Bathiudeen are national politicians but in the south, mainly provincial ministers were mentioned as influential interveners in disputes. The provincial system was introduced under pressure from India as a solution to the ethnic conflict and formed part of the Indo-Lanka Accord. However, whilst several functions were devolved to provincial level and indeed provincial-level ministries were established, operational finances

as well as budgetary priorities are still controlled from the centre. Provincial ministries have limited opportunity to raise revenue directly from the public and as such cannot implement infrastructural and development work as they see fit. Several national level ministries have direct lines of control to, and indeed direct branch offices at the District Secretariat. To compound the difficulties, MPs are allocated an amount of money which they can spend on developmental purposes in the district they represent; this serves to further undermine provincial and local authority, bolster the authority of MPs and enhance the relationship of MPs to central government.

The police

In all three sites, the police undertook a number of administrative, disciplinary and dispute mediation tasks. These included conducting inquiries upon request, recording entries and statements, holding people in custody or placing them in remand for a stipulated period while a case was being investigated, interrogating suspects, imposing fines, and issuing warnings. They could decide whether some conduct or event constituted a disturbance of the peace or warranted police intervention. Even if they disagreed, disputants could (though only a few did) insist on the case being filed at the courts or referred to the mediation board. The police were also instrumental in offering protection to witnesses or others under threat during a dispute. In this way, the police supported the interventions of different mediators, and on many occasions, they themselves were the mediators of some disputes.

Less visibly in the accounts, the police continued to play a key part in the dispute even after the case had officially been handed over to the courts or to a mediation board. For example, they were responsible for making the different parties attend hearings, for investigating the incident, gathering and preparing evidence for the prosecution at the trial, preparing the reports, procuring, encouraging and protecting witnesses, and procuring the suspects for the trial. Sometimes the police were required to give evidence. Furthermore, the police were

also responsible for enforcing the judgement from the courts, and ensuring all parties adhered to the verdict. Their responsibility for enforcing the decision was also evident in cases that did not end up at the courts. GNs, mosque trust boards, the peace awareness committee and politicians all relied on the authority of the police to enforce their decisions in disputes, if one party was recalcitrant. These functions of the police placed them in a position of considerable power with regard to bringing about the outcome of a dispute and in maintaining the status quo of the powerful. For these reasons, I wanted to look more closely at the role of the police in the problem-solving process and the way this impacted on outcomes in the three sites. I do so in the next chapter.

The courts

Only 4 per cent of the stories from the north-west involved recourse to the courts, compared to 15 in the two central sites and ten per cent in the southern ones. In all three sites, involving the courts was an act of last resort – most disputants had consulted other forms of dispute management and found them wanting. However, resort to court cases sometimes signified a tactical approach – filing a case meant delaying it and it also allowed the disputant to involve a wider range of interveners. In some cases, especially in the south, a court case was inevitable as the particular incident demanded court proceedings under the penal code – such as murder. In the central and north-western sites, filing a case could be taken to mean a loss of faith in the GN and other local figures of authority to mediate the situation fairly, and could sometimes incur anger on the part of the other villagers, the GN or the mosque trust board.

Some suggested that filing a case was an act of arrogance – implying to one's opponents that the family considered themselves to have enough political and social clout to successfully challenge them in courts. For example, those who start the case often gauged the likelihood of their winning a case based on local support for them, and would only proceed on those

grounds. Canvassing opinion and support amongst villagers and relatives was crucial both before and during a court case. At the same time resorting to the courts implied, some said, a certain degree of access to wealth, especially in a context where most people stated that they would have liked to take their dispute to court but lacked the material means to do so. Apart from criminal proceedings, most court cases were to do with land disputes.

The hesitance evident in these case studies about proceeding to court cases was surprising, given that Sri Lanka has long had a reputation for high levels of litigiousness, even for petty disputes (see for example Rogers 1984). The differential rates of recourse to court however suggest some differences between different communities and different socio-economic backgrounds; the better-off in Mahagoda and in Mahamalwatte, both largely Sinhalese communities, were certainly much more likely to file a case in court. This was in contrast to Merry's suggestion that the more vulnerable sections of community are more litigiousness as they look to the state to redress their injustices (1990).

While access to and affordability of the courts was cited as a reason for the hesitancy, the multi-layered complexity of the legal system in Sri Lanka might also deter some communities from regarding the system as a viable mediator. The elements of plurality in the legal framework which make up the Sri Lankan justice system have been well documented (Rogers 1984). Despite much modifications and amendments, the basis of Sri Lanka's legal system remains influenced by Roman-Dutch Law and even more prominently English legal traditions. These influences are observable in the matters of inheritance, of property, and of commercial and contract law. Criminal law and civil law are largely based on British principles. However, Sri Lanka recognises the place of Kandyan law and Muslim law, and there have been some attempts to recognise the personal laws of the Tamil population in Jaffna, although this last is a matter of controversial debate.

The Sri Lankan court system consists of a Supreme Court, a Court of Appeal, High Courts, Municipal Courts, and Magistrate Courts, and a number of Tribunals. There are seven Primary Courts, but where these do not exist Magistrate Courts have the same jurisdiction (see www.justiceministry.gov.lk and The World Law Guide on www.lexadin.nl). There are 74 judicial divisions in Sri Lanka, each of which has one Magistrate's Court vested with original jurisdiction over criminal offenses. Most criminal cases are initiated at a Magistrate's Court by a police officer or public servant with a written or oral complaint to the magistrate, subsequent to which the Magistrate is empowered to investigate the matter and decide whether it should be dismissed or if not, which Court has proper jurisdiction over it. The Magistrate's Court also sends cases to the Attorney-General's Department who then decides whether a case goes to trial at the High Court. These are long-drawn processes sometimes taking many years. In addition to these Courts, there are a number of Tribunals such as the Inland Revenue Board of Appeal and the Labour Tribunals and what is also known as the Qazi courts (an officially recognised Muslim court headed by a Qazi, i.e. an Islamic legal scholar, who adjudicates on Muslim matrimonial and family matters) which handle specified cases. Disciplinary matters pertaining to Buddhist clergy are likely to be handled by religious councils under authority of Buddhist priests, unless deemed as serious or grave misconduct. Mediation Boards are a formal community-driven mechanism implemented by the Ministry of Justice through which a selected committee of respected community members provide 'a rapid, inexpensive and efficient access to justice' for people who are unable to resolve their differences on their own (Moore, Jayasundere & Thirunuvakurasu, N.D.). Most decisions taken at Magistrate, Primary, District or High Courts as well as those decided by certain Tribunals are eligible for appeal. The decision of the Court of Appeal may be taken up at the Supreme Court if there is a substantial question of law. The Supreme Court of Sri Lanka is the highest and final court of record. Except for

those involving fundamental human rights violations, most of the disputes in this research which involved the courts were administered at the Magistrate's, High and Primary Courts.

Problem-solving in the southern villages of Rakmulla and Mahagoda

Fluctuations in prominence of actors

The post-tsunami aid-related successes raised expectations of what the coir committee of Rakmulla could – and should – deliver in the community. The committee was encouraged to take up responsibility as an informal mediator of disputes by Siyath Foundation increasingly by the poorer sections of the Rakmulla community. This new task was aided by the funds from The Asia Foundation's Access to Justice Programme and under its auspices, paralegal training assistance was provided to selected members. Such interventions by the committee members were meant to presage the empowerment of community, i.e. community organising itself to address its problems and disputes in a fair and reasonably self-directed manner. That the committee acted proactively to rehabilitate two illicit liquor brewers in the area, by providing alternative employment to these two women was seen as a sign of its transformative potential. Perhaps such enthusiasm was too hasty. In our interviews, both with the committee members and with some of the Rakmulla residents, there were indications that the committee's influential role was on the cusp of decline, prompted by the dwindling post-tsunami funds. The tapering off of post-tsunami funds had affected what the committee could do – and was threatening the newfound regard that the community had had for the committee. For example, just a few weeks before our arrival in the village, the committee had had to announce the imminent closure of the free pre-school due to a lack of funds. For some informants, this was a problem because it meant that they could not afford to send their children to the nearby fee-charging Montessori; their children not only lost out on early educational opportunities but household income was compromised because women

would now have greater childcare burdens than before and had comparatively less time to do coir-spinning. Although they did not blame the coir-workers' committee for this decision, they were nonetheless disappointed with them. Housing assistance for tsunami-affected families too had been stopped some time ago, another source of rankling amongst poorer families. Some informants pointed out that the recently bloated membership of the coir-worker co-operatives was in rapid shrinkage. There were disparaging comments that the hey-day of the committee was already over. Without the bolstering of the tsunami aid resources, the committee's significance in the everyday affairs of the community appeared seriously compromised.

This trajectory of the committee – in which a particular mix of circumstances pushed a local group into greater prominence and later decline – was reflected in the accounts from other sites as well. To all accounts, the mosque trust boards in Kundruvillai and Periyannagar, and the peace awareness committee in Podimalwatte, had benefited from the recent attention of non-governmental organisations intent on strengthening their community mediation role. The attention resulted from different circumstances in each case – as part of the international and national humanitarian and development assistance to displaced Muslims in Periyannagar's case, in response to the recognition that local Puttalam residents were being left behind by a disproportionate focus on the displaced in Kundruvillai's case, and as part of a long-term initiative to improve ethnic harmony in the Podimalwatte. In each case, training and educational inputs heightened the profile and capacities of these groups, while networking support ensured that they were brought in contact with reputed and influential key decision-makers in the vicinity.

These interventions raised the group members' relevance for concerned or needy community members; group members were able to provide useful information (about how to access a service, for example) or approach a key official on behalf of a fellow resident. Such

assistance was of particular value for poorer or less powerful residents. For example, the coir-workers' committee was approached by lower-income women and their families, whilst members of the temple society – which boasted members of a higher social status – by richer residents both in Mahagoda and Rakmulla.

The usefulness of the coir-workers' committee to resource-strained residents was significantly enhanced by the considerable post-tsunami resources and support directed towards them. Access to resources was one of the key enabling factors shaping the significance of a local group, and loss of such access impacted badly on them. When non-governmental organisations and their initiatives lost funding, or moved on in terms of project priority, the standing of local groups who were dependent on these sources of help also gradually suffered.

The 'articulation of interests' and the desire to maintain the status quo

Even those local groups who relied on more enduring means of support were sometimes compromised by the actions of individual members and other internal dynamics. In the case of the temple society in Mahagoda, disagreements over how best to respond to a case of child sexual abuse in the community led to a split of opinion amongst its members, and a misunderstanding about the corresponding actions caused widespread disillusionment about the suitability of the temple society members to address problems in the community. An examination of this case provides a closer view of the multiple interests and agendas that intermingle to produce a particular outcome, and how individual demands for justice may sometime get overridden by community concerns over related aspects of the case. It also outlines how a local group's standing in society could become compromised by perceptions about their functioning, motives and general conduct of its members.

Our first introduction to the event was from Prema, one of our first interviews in Rakmulla.²² The child in question was Prema's nephew, the youngest of four children left to her care by her migrant brother and sister-in-law. The young boy of ten was placed in the monastery following the post-tsunami financial constraints experienced by the family. Prema confided to us that she had first heard of the abuse when the boy left the monastery and informed his older brother of the assistant monk's actions. She had reported the matter to the police, she said, because she did not want any further trouble for her nephew and also because she wanted the monk punished. In the early stages of the case, she noted the police had been very supportive, and keenly pursued legal action against the monk. She had also informed the chief monk who had been incensed at this breach of trust, had assaulted the assistant monk and terminated his services. Shortly afterwards, she said she was visited by four society members who offered their commiserations over the incident. They then persuaded Prema to drop the charges in the interests of her nephew, claiming pursuing the case would serve to only embarrass the boy and mark him out in society. As compensation (and a sign of their good intentions), they had presented the child with four sets of new clothes and one thousand rupees.

After she withdrew the charges, she came to know that the visitors had acted at the behest of the monk who had abused the child. She had been outraged and had sought to reinstate the charges. But this time, she said, the police officials were no longer as supportive. They urged her to rethink the case and became decidedly more hostile when she refused to accede to their opinion. When the police returned a verdict that there was insufficient evidence to prosecute the monk, Prema was angry and disgusted. She suspected that the members had influenced the police against her. The situation was further compounded when the chief monk refused to take back the child to the pirivena, and re-engaged the services of the monk instead. Prema denounced both the police and the monk as moral cowards. Part of her

²² Interview 1.9.1

frustration came from not knowing what to do next with her nephew. In her discussions with us, she said that she was worried that these experiences could mean that the boy would become a source of trouble for her in the future. She insisted that as soon as he was of age, she would send him off to the army or alternatively encourage him to migrate abroad as his mother had done.

In fact, it was only later when I chanced to interview one of the temple society members that the motives of the members who had supported the monk's reinstatement became clearer. Ajith was a well-established businessman who was referred to us by the GN as a man who was active in handling local disputes.²³ He was a temple society member, who was mentioned by a few others as a strong figure of assistance in disputes. One informant gave an account of how Ajith had lent him the money to settle a dispute with a widowed woman over a piece of land adjacent to his home. Ajith also described himself as a person with a keen interest in community as someone that many saw as a reliable advisor and patron. Describing how he had been involved in the successful resolution of one of the local disputes, he referred to recent events which had almost resulted in the shut-down of the local Sunday School.

The Sunday School, he said, was reputed to be one of the best in the district, and it was operated by the assistant monk. Due to a disagreement between the chief and the assistant monks, the former had, (in a far-too-impulsive gesture according to Ajith) terminated the assistant's services at the temple. In retaliation, the assistant monk stopped the Sunday School classes. His action had prompted a storm of protest from many of the parents. It was widely feared that the school would have to shut down because the elderly monk (already in his eighties) would not have the energy to conduct the classes with the same zeal as his younger assistant. Ajith concluded that the accomplishments of the School and the prestige

²³ Interview 1.22.10

it brought to the village – not to mention the children’s opportunity for good religious education – were jeopardised.

It was this concern which had prompted action amongst some of the temple society members, he claimed. Together with other society members of similar opinion, he had sought to bring these concerns to the notice of the chief monk, and had also encouraged the parents to voice their dissatisfaction over the suspension of classes. Because our interview with him happened after that with Prema’s, I was curious to know whether Ajith had been aware of the nature of the disagreement in question. In this, he was quite forthcoming, mentioning that the younger monk had ‘misbehaved’ with a child. He reiterated his opinion that the interests of the boy could not have been served by making the situation public. Not many in the village had known of the incident at the time, he commented. This was the reason why, according to him, he had persuaded Prema to drop the charges, and had lobbied the chief monk to reinstate the assistant monk at the temple.

Not all temple society members had reportedly been happy to allow the assistant monk to resume his duties unscathed after his misconduct. The second temple society member whom we interviewed referred in passing to this incident, noting that he, and a few others, had been responsible in persuading the chief monk to ‘write’ the temple to another monk in the vicinity, effectively disinheriting the assistant monk.²⁴ His main concern appeared to be the moral stance of the temple in the future, and less the current. He was discomfited with the idea that a monk of suspect morality would become the future chief monk, given his popularity. The members who were in support of the assistant monk took this opportunity to convince the chief monk that if the new assistant monk were around, it would be impossible for the previous one to “misbehave”, which meant he could be safely retained for the

²⁴ Interview 1.24.8

purposes of running the Sunday School. This compromise placated the conflicting parties of the society and the chief monk relented.

The confluence of interests – at individual, local and even national level – in this dispute and its eventual outcome invokes Moore's (1977) assertion that dispute settlements could also be understood as events of articulation, where individual interests and powerful social structures cohere to produce a particular outcome. Indeed, Brass makes a similarly powerful point in his discussion of violent political conflict in Northern India, when he states that it is in the interests of many that 'finally nothing be done to disturb the positions of all who gain from the perpetration of such acts' even whilst claiming sympathy for the victims or condemning the perpetrators (1994:264). He goes on to argue that the persistent practices of collusive action are useful to all implicated in them. These two features – firstly, the way in which local groups judged events and their possible outcomes on how they might impact their status and sphere of influence and secondly, the way in which local groups the options available to disputants to pursue different sorts of outcome – were discernible in the accounts from the three sites.

What is equally noteworthy is that events such as these have considerable transformative and productive potential, in a similar way to conflict situations and violence (as noted by Spencer 2007). Without wanting to take the statement too far, I would like to point out that while the stand-off in a dispute is between the persons concerned, more often than not, these get treated as if they represent something larger of society. They tend to be taken as a stand-off between competing even conflicting groups for example where the outcome gains symbolic as much as actual importance. Additionally, in calling upon local and state actors to take up roles in the dispute, informants bring in their local and sometimes national institutions, and together with them, they bring along the social relations and power dynamics in which these

institutions are embedded. It is not surprising then that their outcomes 'say something' about whether the status quo of society is being maintained or is under threat.

The sudden successful campaign against the firm favourite to inherit the temple appeared to have puzzled the residents of both villages, especially those who were unaware of the reasons behind the tensions between the two monks and amongst the temple society members. In their interviews, villagers surmised political differences to be the main cause of tensions. This was seen to be most likely explanation because the chief monk had recently become overtly political, in a move frowned upon by many of the villagers. It had weakened his credibility and moral authority, and was no longer viewed as an impartial intervener in interpersonal disputes.

The incident had compromised the position of the temple society; the level of disunity observed by villagers was unexpected, and of which they certainly disapproved. The temple society members whom we interviewed seemed particularly aware of the fall-out from these recent events, and noted the importance of restoring the members' credibility. Indeed, the uncertainty over the chief monk's succession and the rapid social changes and challenges in the post-tsunami context infused the informants' accounts with a strong air of insecurity.

Social acceptance and status as a prerequisite for dispute managers

There was also a second reason why some of the temple society members highlighted the need to meliorate the social position of the temple society. In talking about how problems were usually solved in the two villages, Ajith mentioned that the first points of contact in the case of a dispute or problem had been the GN or the chief monk. In the chief monk's case, his advanced years, and his political proclivities and the upheaval over the assistant monk had compromised his position as an able mediator. The GN, on the other hand, had been a popular figure until recently, when the person representing this position had been changed.

The new GN, a graduate in her mid-thirties, was very unpopular, especially amongst Mahagoda residents; ‘useless’ was how one informant described her. She was said to be unfriendly and unsympathetic to their problems so they could not talk to her either about the village or their personal matters. In our encounters with her, she came across as a quiet, unprepossessing person. She was not unsympathetic but shared her concern that she might not be able to help us. She did not like it when villagers visited her house on matters of work, even on emergencies, and was said to have sometimes scolded them for doing so. She had designated Mondays and Thursdays as public consultation days at the office, and expected villagers to attend to business during these times, even if it meant they had to take leave from work. It might be that these were attempts to demarcate boundaries between home and work-space, a concern for any parent with two children in primary school as hers was. Although none of the informants mentioned it, I also wondered whether her gender and her age formed part of the residents’ disaffection for her.

In contrast, the former GN was described by many Mahagoda residents as helpful, supportive and as someone who ‘knew about people’s problems’. From the accounts of the villagers, he seemed to be all that the current GN was not. He was reportedly very accessible and obliging – and he was very well-connected coming from a well-regarded family. His post-tsunami role had also endeared him to some; he had been active and forthcoming with assistance. He assessed the nature and extent of damage, and certified eligibility for assistance, especially housing assistance. Even prior to the tsunami, the GN had been instrumental in supporting the work of the coir-workers’ co-operative, critically eliciting a sympathetic response from the police when the coir-workers’ growing independence had infuriated the local tradesmen and led to threats of violence against the coir-women’s committee leaders.

Whilst most complaints focused on the inefficiency of the GN, a few pointed comments on her social origins cast light on the particularly hostile reactions from villagers in Mahagoda. In talking about her reluctance to have villagers visit her home, one woman scornfully added that the current GN was ‘a fisherman’s daughter’ (a reference to her status as low-caste) and therefore her living conditions ‘low and shaming.’ Her lower social class was also occasionally used to explain why she did – or could – not share the same concerns they had regarding education, employment, land or business. Many residents from Mahagoda felt that she did not properly understand or value their work, describing the different inconveniences she had made them suffer; one informant spoke bitterly of an incident where the GN had insisted he take leave in order to collect a certificate from her office. A number of Mahagoda residents were also convinced that the GN (together with a local politician) had been instrumental in assisting the cause of the fisher-families who had been granted the post-tsunami housing, which was so widely contested. Rakmulla residents, on the other hand, seemed comparatively less angry with her, although they too noted that the efficacy of the GN had recently declined. The reactions of the Mahagoda residents indicated the importance of social background and status to the credibility of the (even relatively powerful) position of the GN.

Marguerite Robinson describes a similar situation in her book, *Changing Political Structures in a Sinhala Village*, where there is hostility from the villagers on the appointment of a low-caste Grama Sevaka (1975). During her field-work, she observed how key community leaders had privately expressed their intention to ask for a more appropriate GS at a suitable time in the future even before the appointee had commenced work in the village and she describes a scene in her book where a group of leaders pointedly rebuff the social overtures of the newly-appointed GS, ignoring him when he appears for an introductory social visit at one of their houses. She notes that they were successful as planned, and indeed the low-caste GS had been transferred shortly after she had left the field.

The leadership vacuum in the south and the rise of the police as mediator

The loss of faith in the monk, the low social status of the GN, and the disillusionment with the temple society had left the community with few alternative dispute resolution mechanisms, Ajith noted. Because these residents could not bring themselves to accept the authority of the GN, they were seeking out ways to sideline her involvement in their everyday problems and dispute management. He observed that the compromised positions of the two figures of first contact for problem management had led to an increased reliance on the police as a mediator of disputes. The significance of his remark struck me only after I had read through the different accounts from the southern sites, and drew up the initial data tables. The analysis suggested that the police were a significant mediator in one of every three stories from the southern sites. When I removed the tsunami-related stories of aid distribution in the southern sites, the rate of police involvement in everyday disputes rose to an astonishingly high forty-eight per cent.

Robinson comments on the dangerous and disruptive effects of not having clearly defined leadership roles in the community where she did her fieldwork in the early 1960s in Sri Lanka. She does this in the context of transition in the village where the headman was replaced by the GN, the irrigation headman by an agricultural committee, and the dispute management responsibilities of the headmen taken over by the mediation boards. She documents how the failure of these systems to take root resulted in the lack of effective leadership and organisation in the village, including a gradual erosion of dispute mediation mechanisms.

She attributes the failure of these two newly-introduced systems to the loss of prestige and privilege that had generally accompanied the positions in the transition which, on one hand, de-motivated those in these positions to exercise their powers and on the other hand shifted the 'rules' by which disputes had been handled prior to the changes. The introduction of the

possibility of alternative political patronage systems which challenged existing power structures meant that violent conflict was more likely to occur between people from opposite parties, and these conflicts were conducted in a new idiom with a higher intensity of violence than what she had observed before. This shift in how conflict and dispute was mediated meant that leaders tended to be unskilled and uncertain in how to assert authoritative power in potentially problematic situations.

The aspects of leadership which she highlights are ‘settling disputes, helping villagers obtain jobs, medical treatment or legal advice, representing the village in any meaningful way to the outside, rather than just issuing rice ration cards, branding buffalo and attending funerals’ (1975:201) – in doing this, she points to the definitive moral and social dimensions attached to leadership positions in this context. This is confirmed later on in her analysis when she refers to honourable standing within the community as a key criterion for leadership in the time period prior to and early on in the 1960s. More importantly, the criteria for what counts as honourable standing had also become unclear during the period, and more problematically, were inconsistently observed. Equally important was the ability of those in positions of leadership to access outside resources and sources of power. Without these aspects, leadership in the village, she states, became untenable. Thus, the lack of a leader who could be widely accepted by the members of these two villages may be why the police played such a prominent role here.

Problem-solving in the central sites of Mahamalwatte and Podimalwatte

The influential role of the GN

In the central sites of Mahamalwatte and Podimalwatte, the GN whom I encountered was as equally influential a figure in problem and dispute management as the police. He was a strong presence, and featured as a key mediator in one of every three stories shared by the

informants. A graduate from a prestigious local university, he dressed smartly, lived in a large modern house, and zipped around the countryside on a motorcycle polished to a shiny finish – in obvious contrast to the quiet-spoken woman GN from the southern sites. He was also clearly very approachable; on those occasions in which he accompanied us around the village, people came up to him and he often stopped to listen, motioning us to move on with our work.

From my discussions with him, it was clear that he prided himself on being progressive and resourceful. He noted the particular challenges of long-term subjugation and the chronic poverty of the people of the central highlands. “The GN before me, he would make the people worship him when he did them a service. The people were taught to bow to him and to obey him. So they were very surprised when I stopped this practice and asked them to get involved in community development.” Linking the villages to KCDF, the partner organisation which had directed me to the site, resulted from his efforts, which in turn was enabled by the chairperson of the organisation having been one of his former lecturers at university. The link brought in regular technical and financial resources to the villages. He was the coordinator for their programme in the area, and could raise the resources required for improving services in the area – expanding the crèche, for example and putting in better water supply pipes. Many of the informants noted that he was hard-working, fair-minded and sincere. “Even with his young age, people abide by his word – they don’t even consider the age difference.” I was told by one of the informants. “People here honour him because he tries to take decisions impartially and sincerely.”

One recurrent point of positive assessment was that the GN helped everyone regardless of how rich or poor they were – one particular incident was cited by a number of informants. About ten months ago, a woman from Podimalwatte who had sought domestic employment in Colombo had gone missing. Her family had heard from her in the early weeks of her

service but several months went, where she had not contacted them, and they had not been able to contact her. The family – an elderly father and two young siblings – were too poor to travel to Colombo in search of her, and had appealed to the GN for help. The GN had been tireless in his search for her, we were told, contacting various police and other contacts until he had located her at the residence of a wealthy doctor in Colombo. She had been forced to work unpaid and had not been allowed to leave the premises. The GN then took it upon himself to visit the doctor on behalf of the family and had persuaded the doctor to allow the woman to return home. This story was often told as a testament to the sincerity and impartiality of the GN – and his willingness to also help the “poor” of the community.

According to the GN, however, his key project – and one of the things for which he was most highly respected for in the two villages – was that of improving ethnic harmony in the area. He had indeed instigated a number of initiatives to improve relations between the various communities of the area – most notably the peace awareness committee described earlier. It was clear from my discussions with him that this was something which mattered deeply to him. He believed that racial tensions stemmed from the impression given to villagers that development and justice were zero-sum games. “People here have been told that if the Tamils were to gain something, then the Sinhalese would lose (it) or the other way around. This is why we pull each other down,” he told me. “I have been trying to promote the idea that development ... human rights and equality ... (are) for everybody. We can only lift up the area together, not by working against one another.”

The GN clearly reveals his values in these statements. Zigon (2008) asserts such articulations should not be taken as removed from the social and political world. The GN is consciously and unreservedly intent on shaping, even disrupting, the prevailing relations between the different ethnic communities in that area. As such, in the ‘critical’ events of the disputes, he was careful that he proposed a way that was resonant with human rights and justice

frameworks – a discourse that appealed to many informants judging by the popular sentiment in which he was held.

Official endorsement as a community dispute mediator

A key element of the success of the peace awareness committee was the unequivocal support and official endorsement given it by the GN. He would refer any disputes to the peace awareness committee members first, and they were encouraged to take down details of the case from the different parties involved, discuss the case with each other and with him, and make the recommended interventions. They were also expected to visit families which were known to be having disputes, especially ethnic ones. These were strategic actions on behalf of the GN to publicly indicate that the committee was acting with this approval and endorsement, and that it had his support and trust. As the committee built community confidence in their abilities, he requested that they consulted him only on those cases which were particularly (politically or socially) sensitive or when the disputants were particularly stubborn with regard to any reasonable interventions. He also put them in contact with other key officials in the area – the local council members, the village headman, the estate leader, the Member of Parliament, officials at the District Secretariat, etc – whom he considered essential for successful dispute management. In doing so, the GN effectively vested a measure of his official authority with the committee. The implicit message was clear – he expected other officials and members of the community to allow the forays of the appointed committee members into local dispute management and to consider their interventions, at least as long as he was in charge of the area. This official endorsement was particularly important to the functioning of any local group. It was what members of the coir-workers' committee in Rakmulla yearned for, in order to ensure their position in community as a recognised mediator of the community. "What we really need is a kind of officially-issued card – like the ones that the CID (i.e. the Criminal Investigation Department) has. That

would really help us (assert our authority),” one of the long-standing members of the coir-workers’ committee said, rather wistfully.²⁵ She had a good point; as the official endorsement enjoyed by the peace awareness committee was based on the individual GN’s delegation, and not assigned through official writing, the situation could change if a new GN comes – which meant the role of the peace awareness committee could fluctuate similar to the coir-workers’ committee. This link to powerful institutions also resonates with Robinson’s observation that power is the ‘recognised ability to produce intended effects’ (1975:9) rather than the common assertion that power is the production of intended effects.

The ability of holding up as a mediator in the face of abuse and threat

Endorsement by official figures was also important for another reason. Many disputants appeared to accept the committee’s offer of intervention, especially because they came on authority of the GN and increasingly because they were seen to be effective interveners. Others however refused allow the members any grounds for intervention, even with the support of the GN or other official figures. This happened especially in those cases where one of the families had powerful contacts outside the village, and expected to be able to draw on these as a means of positively influencing the outcome. A minority however reacted angrily and with hostility to the committee members. Younger members had, occasionally, had complaints brought against them to their parents, some (Tamil and Muslim) members had been threatened with violence, and others had derisive and derogatory comments made about them in public, or were shouted at on the streets. In these cases, it was particularly important that the members were able to rely on the support of those around them, and especially on those who had facilitated their entry into the sphere of community dispute management.

²⁵ Interview 1.36.4

A middle-aged committee member, Indira, a pre-schoolteacher, who had been working on expanding the crèche and pre-school services for women in the area, described how she had been targeted over a period of 6 to 8 months.²⁶ The unhappy disputant had send death threats against her and her young family, and he had also subsequently warned families not to send their children to the pre-school as means of harassing her and jeopardising her efforts to improve services. It had taken interventions from the GN, the police, and the village headman before the man had ceased his agenda of intimidation. In recounting this story, however, Indira emphasised how the incident had rather increased her commitment to the causes of the committee. She was convinced that it was her confidence in the sincerity of those who worked to protect her – the GN particularly, and through him, the police and village headman – which had sustained her and her family during this difficult period. She had also noted that many families had privately spoken of their support for her, even though they had been hesitant to publicly demonstrate this. This had also been a source of great encouragement for her, she said.

Younger members reported the additional difficulties of dealing with the anxieties of their parents and siblings in similar circumstances. Young unmarried women seemed the most vulnerable, as their public presence and social activities could be used to attack their reputations. As pointed out to me, this was easily done because their work meant that women spent a considerable amount of time outside their homes, and sometimes took on cases in the evening after work. Another source of vulnerability was when the disputes involved domestic violence or sexual assault. One woman commented that she loved the work she did, but her parents were concerned how rumours related to her (that had begun after she had successfully helped a girl in Podimalwatte prosecute the man who had raped her) could jeopardise the marriage they were in the middle of arranging.²⁷ In these

²⁶ Interview 2.19.12

²⁷ Interview 2.18.7

situations, members noted that public official recognition and appreciation of their work ensured that their families remained supportive. Mediators therefore needed to ensure that their own positions were strong enough to withstand threats of various types.

The influence of politicians on disputing behaviour and outcome

One of the more complicated situations for the committee, Indira mentioned, was when they were aware that one of the disputants were deliberate in their aggression against their neighbours. As examples, she described two cases that she had been involved in, both of which were land disputes where neighbours disagreed over recently-enacted fencing. The first involved a heated dispute between a Tamil and Sinhala family, where the Tamil family had put up fencing which the Sinhalese one disputed. Both families had requested the peace awareness committee to mediate the dispute, and Indira, together with one of her colleagues, had visited both families. After noting their concerns and examining their letters of settlement, she had carried out a rough survey of the land together with members from the two families. Her quick survey indicated that the Tamil family had been correct in their measurements of boundary for fencing.

The Sinhalese family had refused to accept the conclusion, and after an intense series of discussions, Indira and her colleague had decided to refer the case to the GN and the village headman. However, before the GN could visit the house, it had come to their attention that the Sinhalese family had contacted one of the provincial Ministers, who had been in touch with the GN, the headman, and with the LRC, asking them to assist the family in need. Although the GN had facilitated a formal survey and reiterated Indira's results, there was considerable reluctance on the part of the Sinhalese family to agree to this outcome. They wanted the LRC officials to come out on their behalf and repeat the exercise. Indira explained that she was convinced that the family's connections to the Minister had given

them rise to hopes for an outcome favourable to their position, a hope that was exacerbated by their neighbouring family's Tamil background.

The second dispute was one referred to in the previous chapter, which Wijeyaratne had had with his neighbour, whose wife had eloped several years ago. The neighbour, Karunadasa, had asked for assistance from the peace awareness committee.²⁸ In her measurement of the land, she concurred that Karunadasa had been right in disputing the fencing. But Wijeyaratne's refusal to accept the verdict from either the committee or the GN had been followed with a request to LRC officials, a procedure which had indeed secured him a positive outcome. Wijeyaratne was known to have close connections to a number of relatively high-profile figures in Sri Lanka, Indira noted, implying that this had been instrumental to the outcome – an observation corroborated by Wijeyaratne's remark to the same effect.

In Indira's opinion, both these families had sought to utilise the act of fencing as an opportunity to deliberately encroach on their neighbour's land. She remarked that such acts were more common amongst those who had access to socially and politically powerful contacts, especially if these were to politicians or the police. Such connections made intervening particularly difficult for the peace awareness committee, Indira observed. The highest rate of interventions by politicians was in the central sites, with almost a fifth of the stories reporting such involvement.

One resident from Mahamalwatte provided an account in which a number of local figures of authority, from the GN to an array of politicians intervened to ensure an incident did not go out of control.²⁹ Two months ago, there was an altercation between a Muslim shopkeeper and his Tamil employee which was allegedly the consequence of the shopkeeper scolding

²⁸ Interview 2.28.9

²⁹ Interview 2.29.10

another employee (also a Tamil) in abusive and offensive language. The Tamil man, in a fit of anger over the use of such language against a friend, had first fought with and then assaulted the shopkeeper. As was usually happened in such instances, friends of the Muslim man, and those of the Tamil men gathered outside the shop lending a tense and potentially explosive air to the situation. The informant had a small shop next to the Muslim man's and he had been present as well, together with other shopkeepers and retailers. This latter group had been keen to avoid a fight so close to their businesses, and therefore had called a number of people to intervene as soon as possible. Some had contacted the peace awareness committee and the GN. The GN informed the local council member and local MP, and together with them, had informed the police as a precaution. They had also contacted the well-known Minister, Arumugan Thondaman, and requested his immediate assistance. In addition, the local council member had appealed to the nearest Muslim mosque trust board to Mahamalwatte to advise the Muslims to refrain from escalating the problem, whilst the Minister appealed to the Tamils.

These appeals were first informally communicated amongst those who had relationships to these politicians. For example, the informant explained that a businessman colleague of his knew the Minister well and had received a phone call to indicate the need to reduce tensions in the village. More formally, the very next day the Muslim mosque trust board made a formal announcement for calm after the mid-day prayer. An event was organised two days later, where by the two men, the Muslim employer and his Tamil employee, were requested to shake hands before the Minister, the GN, the MP, and the local council member. The interventions worked to defuse tensions, he said, but the Tamil employee had since left the employment. According to the informant, the quick interventions by the GN, and the assistance afforded to him by the politicians, had been crucial in avoiding an escalation of conflict and possibly violence.

This concurs with Paul Brass's (1994) view that key figures of political authority – whether local or central – could influence the potential for political violence in a given instance, because politicians could effectively communicate whether or not they were willing to tolerate violence within their constituencies or from supporters. In his analysis of five detailed re-constructed narratives of violence in India, he points out how failure to intervene – and in some cases, even subtle messages of encouragement – had resulted in situations of widespread communal anger and violence. He argues that therefore it is impossible to ignore the intent or will of government and district administration in managing riots and communal violence.

This also works in reverse. Highly charged political contexts enable well-connected people to utilise the situation to get ahead by targeting others who stand in their way, especially if the latter have attributes that make them politically or socially vulnerable (i.e. they can be made to be seen as a potential threat). They use the political context opportunistically to the disadvantage of the other, and in this way the situation evokes the contributions from Kalyvas (2006) and Wadugodupitiya (2010), both of whom who have written in greater depth about what they term 'opportunistic violence'.

Problem-solving in the north-western sites of Periyannagar and Kundruvillai

The difficulties of balancing community interests with individual truths and interests

Describing one incident in which the local mosque trust board had intervened to ensure that the women's association did not insist on the arrest of a local man for assaulting a young woman who was bathing, the leader noted that such a public accusation could endanger the reputation of the village.³⁰ Instead, the mosque trust board had advised women against bathing alone or after dark. One of the members of the women's association, in her

³⁰ Interview 3.15.9

interview with me, indicated her dissatisfaction with this decision, although she did so along with the comment that she understood the concerns of the mosque trust board regarding the context of competition between the local and displaced communities.³¹ Her concern was that the man, still within the community, posed some danger to women he encountered alone – whether local or displaced – when they were collecting water, firewood or simply on their way to work. Echoing similar motives that drove the temple society in Mahagoda into suppressing the charges of child sexual abuse against the assistant monk, this incident highlights an aspect commonly encountered in the accounts – that of addressing an individual case of justice especially where this might threaten community interests, particularly those associated with social identity. This was particularly problematic in those places where such identities were perceived to be under threat, such as in the two villages in Puttalam but also in different ways in the central sites and southern sites. Here again, it is possible to discern the tensions between maintaining community honour and achieving individual justice for women (see Batalia 2000).

Most informants, especially in Periyannagar, reported their comfort and satisfaction that the mosque trust board intervened to handle community and marital disputes, and ensured proper moral conduct. Most also felt that intervention by the mosque trust board was only part of a response, especially in difficult or possibly compromising situations. The overall feeling was that the family and extended network should bear the initial responsibility for managing problems and disputes – an opinion shared by informants in the central sites but less often mentioned in the southern ones. However, for those who felt that the decision of the mosque trust board had been in error, there was limited space in which to voice their concerns or register their appeals. In the previous chapter, Mariyam, whose husband had been inaccurately informed by the mosque trust board that she was having an extra-marital affair, noted that the public censure towards her had been considerable. Although she and her

³¹ Interview 3.20.12

husband had managed to resolve the misunderstanding over some period of time (with considerable cost to her children's education and their own wellbeing), it was not possible to correct the public perception that had been perpetuated. This was something, she pointed out, that she – and her husband and children – had to live with, since the mosque trust board had not repudiated their earlier statements, and in fact, rarely did.

From the accounts there had only been one instance where the mosque trust board's judgment had been criticised and formally withdrawn and this was also after considerable pressure had been exerted by the disputants in question. This was the case where a young couple had been accused of pre-marital sexual activity, based on reported witnessing.³² Although the couple had married under pressure from the trust board, within a month, the husband had filed a complaint first with the trust board, and when they reiterated their judgement and sentence was the correct response to the accusation, with the Grand Puttalam Mosque and the Ulaama Board. He insisted that they were wrongfully accused and requested the dissolution of marriage and the recanting of the judgement. The Grand Puttalam Mosque had urged an inquiry into the matter, and at the hearing, at which members of the Grand Puttalam Mosque and the Ulaama Board had been present. Following the hearing, graceful acceptance of the couple's divorce was seen as an admittance of wrongful accusation. In all the accounts collected, this was the only instance where the mosque trust board had admitted fallibility. More often, the accused who professed their innocence in the accounts bore the consequences of accusation and verdict. Most couples who were compelled to marry under similar circumstances had separated, usually within a year, but they did not challenge the decision of the mosque.

There was another case where, although no formal complaint had been lodged, the family had defied the instructions of the mosque trust board. The story concerned the abduction of

³² Interview 3.8.10

a young girl in Kundruvillai, and was told by her cousin brother, Arshad, a young man who worked as a clerk in a local retail company.³³ His cousin was a sixteen-year old girl and was abducted on her way to school by a man known for heavy drug abuse in the community. He had propositioned her many times before, but she had refused his advances. At news of her abduction, the father and brothers of the young girl had taken it upon themselves to seek out the whereabouts of the young man and had proceeded to attack him. The attack had been frowned upon by the mosque trust board who cautioned the family for acting without its guidance. Moreover, because the girl had been in the company of her abductor for close to a week, the mosque trust board had compelled their marriage. The family objected to the marriage, but had accepted it. Their main response afterwards had been to withdraw all contact with the couple – even with their own daughter who was arguably a victim of circumstances.

Shortly afterwards, the young man had been accused of another abduction – this had prompted wide-scale protest within the community and a demand to do something about him. A group of about twenty people – including Arshad – went to the trust board and requested their intervention. Arshad stated that his main concern was to have the young man severely dealt with, as he had continued to behave irresponsibly. In his emphasis on the continued irresponsibility of the young man, Arshad expressed his opinion that the first abduction had simply been a result of uncontrolled passion – and because the matter had been settled with marriage, pardonable for the most part. The second abduction – which occurred while he was married – was seen as more problematic and as evidence of unrestrained and wilful character.

In response to the heightening pressure, four of the mosque trust board members and four community members – again, including Arshad – had visited the house of the abductor and

³³ Interview 3.22.7

had tried to reason with him, advising him to refrain from these acts (especially since he already had a wife). The man had responded angrily, swearing at the mosque members and using obscene language. Despite an attempt at keeping composure and emotion in check – the visitors had left in extreme anger. The Kundruvillai mosque trust board had written to the Grand Puttalam Mosque, providing a description of the event and stating their intention to separate the couple and his immediate family from the village. This decision was accepted by the Grand Mosque, effectively ending any responsibility on the part of the local mosque trust board for the family's conduct and well-being. The villagers were instructed to ignore them. Arshad stated that he had not seen his cousin since, and in his accounts, he seemed to accept that her association with the excommunicated man included her own exclusion from protection of the mosque, even if this association was the result of having been forced (first by the abduction and second by compulsory marriage).

Limited space for legal intervention

There was little outside recourse for those who disagreed with the mosque trust board judgments. Those who chose to seek legal intervention through the police or the courts independently of the trust board were fined a sum of two thousand rupees. The main reasoning for the imposition of the fine, I was told by a number of mosque trust board members, was to minimise the number of disputes or problems which were submitted to 'outsiders'. This practice had first been adopted by the Periyannagar mosque trust board but more recently by the Kundruvillai one as well. In both cases, the recommended first point of contact was the mosque trust board, and it was the board which was to decide whether a case required involvement of the police or other legal action, ensuring that the board was in relative control over who was admitted to manage the affairs of the community, and how.

This regulated access to these services is reflected in the comparatively lower rate of police involvement – 20 per cent compared to 30 in the central sites and 35 in the southern ones. In

almost all of these instances, it had been the mosque trust board which had requested and organised police intervention into ongoing disputes and problems within the community, and they did so when a person or family defied their authority repeatedly. For example, those who consumed either drugs or alcohol were fined 2000 rupees and if they repeated the behaviour, the fines increased proportionately. In one or two cases where intoxicated behaviour had resulted in public disruption of prayer, we were told the mosque trust board had called in the police, and had requested them to warn (and allowed them to assault) the recalcitrant man. The police had complied as expected – and it was reported that the man was now more disciplined in his conduct.

In very few cases, the police were contacted directly by members of the village. One man – with an alleged reputation for unruliness – had, in retaliation against a fine imposed by the board, accused a mosque trust board member of having made sexual advances on his wife, and filed these charges with the police. The mosque trust board member had had to defend himself against this accusation, and to do so, they had requested the GN to support their protest of innocence to the police – and, in one of the few appearances made by him in the accounts from the north-western sites, the GN issued a letter supporting the mosque trust board and accompanied them to the police station to clear their name.

Access to legal intervention – the police, the courts and even the Qazi courts – appeared highly controlled by the respective mosque trust boards in the two Puttalam villages. Conversely, these institutions too afforded priority to the wishes and instruction of the local mosque trust boards. One man described how when he had applied to the district Qazi court for his marriage, discovered that the members of the court had contacted the local mosque trust board for their opinion on the matter.³⁴ When the judge heard that the local mosque trust board had disapproved of the particular union because the woman's guardian had not

³⁴ Interview 3.14.10

consented to their marriage, he had refused to perform the ceremony unless the couple produced a letter stating that their marriage and subsequent family would not be the responsibility of the mosque trust board. The couple had conferred and decided against the marriage. Such consultations with the mosque trust board by the police when villagers contacted them for certain problems were also reported in other accounts from the two sites.

Contending for authority within the community

There was some concern expressed by members of the two mosque trust boards that their authority was under challenge. A recent non-political group called the Hat Party, and describing themselves as more authentic sources of Islamic knowledge and conduct, had recently begun to question the interventions by the mosque trust boards and had, on a few occasions, sought to change the decisions. They claimed to have contact with key Islamic groups both within and outside Sri Lanka. Its uncompromising and more stringent style of dispute resolution – sometimes coupled with intimidation and threat of violence – generated a level of tolerance of their authority in the community. This certainly worried the mosque trust board in Periyannagar.

Its president explained to me that many of the villagers preferred the mosque trust board's consultative approach to the inflexible one employed by the Hat Party but that most – including a number of the mosque trust board members – were fearful of voicing their concerns given the imperious (and, he intimated, sometimes violently retributive) manner with which the Party dealt with those who opposed its dictates.³⁵ “Unless the people are willing to object (to impositions by the Party), we cannot object either,” he told me. “But people follow their commands because they are afraid, not because they are convinced,” he mentioned.

³⁵ Interview 3.1.12

There was also some indication that the presence of the Hat Party forced the mosque trust board to consider a new angle to their decision-making process – the likelihood of a disputant unhappy with the verdict of the mosque trust board contacting the Hat Party to initiate a second dispute management process. This had already happened on two occasions. The president mentioned that these events had worried the mosque trust board, because some of its members felt that this had impaired the impartiality with which they conducted their business. If a person with close links or known contacts to the Hat Party was involved in a dispute, this was an additional consideration in their decisions – and complicated the situation further. In one recent case, where a couple had been compelled to marry by the mosque trust board³⁶ – the woman had become pregnant whilst the man had been visiting from Colombo, the young man had at first refused to comply with the mosque's instruction, but later had contacted the Hat Party to insist on further stipulations to the marriage. He had demanded that the father of the woman build a small separate house for the couple to live in, as he could not live with his in-laws. This stipulation had been supported by the Hat Party, who had required the father to make the necessary provisions, despite the economic hardships this had placed on the rest of the family.

Interestingly, the Hat Party was described as a group comprising members of both local and displaced Muslims, one of the very few in the district apart from a number of unruly gangs and groups of young men accused of drug abuse. The Hat Party was also comprised mainly of young men, and there was some surmising that this explained the close relationship between the gangs and this group. In two of the stories concerning community violence, mediation by the Hat Party had been requested by the groups of young men responsible for assault. This association with gangs also explained the intimidating potential of the Hat Party – the mosque trust board members mentioned their fear of them, as did some of the informants who referred to the Hat Party's growing influence in the region.

³⁶ Interview 3.1.12

The association with youth also worried the mosque committee members – the president explained that he felt the actions and decisions of the Hat Party lacked a comprehensive and tempered understanding of life and its challenges. For example, that the Hat Party had acceded to the demands of the young man indicated their lack of understanding about the responsibilities and economic difficulties of a family, especially for the father of a large one. The mosque trust board had disagreed with the demand that it was the responsibility of the father to provide housing for the newly married couple, stating that the Hat party was confusing the responsibilities of the young husband with the daughter's father. In any case, the growing threat of the Hat Party to their authority was felt by both the mosque trust boards, and there was some speculation that unless they asserted their superiority in dispute management, the mosque trust boards' authority might prove to be more vulnerable than expected. Robinson (1975) also hints on the emerging ubiquity of 'negative victories', that is, when a satisfactory outcome for the other party is thwarted even if the outcome is not decisively in one's favour.

The competition between the mosque trust boards and the Hat Party for a position of supremacy in disputes and problems recalls the argument put forward by key scholars who recognise the pluralistic nature of legal authority and decision-making power (see Moore 2001, Merry 1997, Wilson 1997). They have pointed out the ways in which multiple arms of the state compete with one another to have authority and enforcing powers. Similarly, such competition exists between the state and other (non-state or transnational) groups. In this instance, we see a similar struggle for power between two local bodies at community level.

Conclusion

The analysis of problem-solving processes in the three sites identified a range of actors and highlighted some of the dynamics and factors that influence the efficacy of mediators as well

as the outcomes to a dispute or problem. While community groups and associations were prominent problem-solvers depending on the historical and present circumstances, the state – in its law enforcement, policymaking and administrative functions – was simultaneously accorded considerable influence in mediating the different problems encountered by the informants.

I have shown the kinds of factors that influence why certain actors become recognized dispute managers – for example, historical and traditional roles that have social significance, access to resources and networks, higher social status, and official endorsement of authority. However, none of these are guaranteed that recognition and acceptance will endure. Rather, as circumstances change, i.e. aid and attention to a particular actor decline, the actor who holds a particular position changes, political parties change, etc, the recognition given to a mediator can be compromised or undermined. Partly this comes about because the changed circumstances compromise the ability of a mediator to deliver favourable outcomes – but sometimes, it is also because the credibility of the mediator has been undermined as a result of the change in circumstances. Equally, the personal attributes of mediators (age – the monk was too old, the GN too young, gender, social origin) as well as their personal conduct (and that of others associated with them) can be used as grounds to dislodge or discount prominent actors and groups. I suggest that positions such as these are fundamentally unstable. They are unstable because prevailing circumstances (inevitably) change but also importantly, because they are direct targets of contending groups or actors seeking to become influential in turn.

Focusing on the dynamics and other elements of the problem-solving process, I have illustrated how the values and politics of dispute mediators shape the outcomes to disputes and problems brought to them. The progressive views of the GN in the central sites on ethnic relations impacted on the way he viewed the reported problems, the responses he engaged in

and on the outcomes he tried to engineer. Similarly, the views of the members of the mosque trust boards – and what they got as input from other bodies of knowledge – on what constituted religious and moral conduct influenced how they responded to allegations, disputes and problems brought before them. The GN in the central site was gearing for social change and a disruption of the prevailing social relations in the area but more often, as shown in this chapter, mediators are keen to maintain the status quo.

The processes of dispute settlements in these accounts showcased how individual interests are linked to powerful social structures. As such they feel justified in calling upon them – or sometimes those representing these structures themselves feel compelled - to intervene in the problem-solving process with a view to ensuring outcomes that protect their interests, for various reasons. Finally, monopolisation of dispute management authority and limited space for legal recourse – e.g. the mosque trust boards’ power over access to the ‘justice system’ – leaves little room to challenge an outcome unless well connected or resourced. This monopolisation also compromises people’s ability to seek remedy through alternative means. In the mosque trust boards’ cases, this was partly driven by the desire to propagate a particular stance they and many others felt protected their community. Yet individual interests and needs get overlooked in this process.

Taken together, the findings from this chapter highlight the fact that most – indeed perhaps all – disputes and problems embedded in the larger social and political context – and that actors and their actions are shaped by these too. They work towards shaping outcomes and deciding agendas, and indeed the ‘manipulations’ and social control elements spoken about by informants in the previous chapter and the reasons for these become self-evident. I have left the in-depth exploration of one of the most striking elements to the next chapter – that of the significance of police involvement in problem-solving. The rates of intervention by the police differed in the three sites. Nonetheless they played a crucial role – directly in some

sites and less so in others. I want to examine the reasons for this and other dynamics of the role police brings to the process of problem-solving.

Chapter 5 State, Police and Violence

Of the 325 cases collected for this study, over half mentioned the police as a significant contributor to the problem-solving process. The police were either the most or second-most frequent mediator mentioned across all sites. In this chapter, I intend to examine the role of the police in dispute management and to develop an understanding of their function in the process from the accounts collected. In particular, I have looked at three aspects of police involvement: communities' expectations and utilisation of the police, the relationship between mediators and the police, police motivation, and the link between the police and the legal and political structures of the country. I begin the chapter with a brief overview of the history of the police force in Sri Lanka.

History and Structure of the Police Force in Sri Lanka

The precursor to the police force in Sri Lanka formed in the early years of Dutch rule when the military undertook to policing the city of Colombo (for a more detailed analysis of the police force, see references (TISL 2006, Fernando 2009, www.police.lk), from which the following summary has been drawn). By late 17th century, the police stations were established in Colombo. After a short stint of responsibility under the military when the British took over the country's administration in 1796, maintenance of law and order was placed under purview of the office of the Fiscal. Magistrates and police judges were subsequently appointed to oversee the city police. Police functions were first clearly defined in 1805; police headmen were appointed in each village a year later and the role of police constable established for the city. The next most radical reforms occurred more than 60 years later, when William Robert Campbell, then Chief of Police in Rathnageri, Bombay, assumed duties as Chief Superintendent. The title was later changed to Inspector-General of Police (IGP), still the top command post for the police. The IGP, supported by a Secretariat,

oversees the work of the top police officers as well as the territorial and functional police divisions.

The Police Ordinance No: 16 of 1865 came into effect in 1866, shortly after Campbell's appointment. It detailed police powers and responsibilities and established a clear hierarchy and duty within the then 500-strong force. During Campbell's tenure, the force grew to thrice this number and took on much of its current shape – becoming an island wide institution rather than localised in Colombo. A year before independence, Sir Richard Aluwihare became the first Sri Lankan to hold the post of Inspector-General. His main task was to develop a police force that aligned with the independent status of the country. He instituted several changes, including several welfare measures, entitlements and privileges for the police, and the first police-public initiatives (comprising rural volunteers and village-level crime prevention societies). Women were enrolled for the first time in 1952 and Specialist Police Divisions were established shortly afterwards. At the time of independence, the Police Department was transferred from the Home Ministry to the Ministry of Defence.

In 2006, the Sri Lankan Police Force numbered over 84,000 personnel tasked with a wide range of responsibilities (www.police.lk): crime prevention, prevention of public nuisance and apprehension of disorderly characters, detection and investigation; security and the preservation of peace, especially counter-terrorism, riot and crowd control, public security, VIP security, intelligence services, and bomb disposal; traffic control; emergency services; and community policing which covers civilian complaints, youth violence, and community education. Their conduct is governed by the Conditions of Services elaborated in the Ceylon Police Constable's Manual from 1953, a set of strict disciplinary and regulatory stipulations, criticised for being provided only on paper (TISL 2006).

The statutory framework for the police comprises of the a number of Acts and Ordinances: the Police Ordinance No 16 of 1865 (with its later amendments to police duties and

responsibilities); the 3rd Chapter of the 2nd Republican Constitution of 1978 (where the fundamental rights of people directly apply to police conduct and which seek to prevent police corruption and misuse of power); and the Bribery Act No 11 of 1974, the Declaration of Assets and Liabilities Act No 1 of 1975, and the Penal Code No 2 of 1883 (as amended) are all legislative pieces intended to prevent bribery, corruption, conflicts of interest and promoting transparency in police service. As part of the legal reforms brought to the Police Force, some efforts were made to decentralize administration and power. Nevertheless, despite a mandate to transfer police powers to provincial authorities in the 13th amendment to the Constitution, the police force remains centrally organised and administered, although there are police stations across the island under divisional command. There was a police station less than 2 kilometres away from Mahagoda and Rakmulla. The police station in the central highlands was close to 20 kilometres away from the research site. In the north-western site, the police station was less than 10 kilometres away

Communities' expectations and utilisation of the police

The preliminary analyses of the data revealed that informants relied heavily on the police as a mediator in the disputes and problems, especially in situations where there was a heightened possibility of interpersonal conflict and potential violence. The high level of police involvement in disputes and problem-solving processes is not very surprising; complementary studies in other contexts have noted that the largest category of police work involve some form of request for help and support for personal and interpersonal problems (Cumberbatch 1984). Informants in this study noted that the risk of retaliatory assault or violence was minimised when the police were notified in such disputes. One informant in the southern site observed that it also meant an added tension between the two disputing parties: any show of violence from the accused party could be risky and continued defiance could be legally problematic, as there was a recorded statement at the police station. This meant that

both parties were more prudent in how they chose to act in a dispute following the filing of the case at the station.

In reflecting back on the contribution of the police to the problem-solving process and the outcome, people tended to highlight not so much actual police actions as much what the police were seen as capable of doing, i.e. their potential for action, and particularly violent action. Although never fully articulated, the idea that the police derived their importance in and their capability to mediate disputes by the threat of violence echoed in different interviews. Whilst some of the force shown by the police could be termed as legitimized forms of violence, much of it was outside their remit of legally allowed action. People in the community did not fear other mediating actors in quite the same way. As one informant noted, ‘the actions of the police send fear through the people, and if we involve them, then the job is made quicker and easier.’

Capacity for violence as a key element of effective police response

Violence, harassment and intimidation seemed to be the main mechanism by which such fear of the police were generated. A number of informants described instances of assault, beatings and abuse by the police. However, far from speaking of these acts in censorial tones, these accounts pointed to how such acts of assault, beatings and the threat of violence formed a substantial part of the efficacy of police action, in the view of many community members.

For example, police capacity for violence was seen as an important element for the protection of those under threat. Just like the coir-workers’ committee members from Rakmulla who were threatened by the mudalalis, or Indira, the pre-school teacher from Podimalwatte whose family received death threats from the man who protested against the expansion of the crèche, villagers depended on some form of protection from the threat of

violence from those upset with them. In both these and other cases, police support was seen as an essential component for the threatened villagers to feel comfortable and secure. The informants believed that their intimidators feared the threat of violence or harassment.

The protection of the police in this way was certainly important in cases of ongoing prosecution or mediation, where informants had been seriously threatened by defendants and other opponents. One of the peace awareness committee members discussed a case where some young men had been accused of raping a young Tamil woman on the estate. After being bailed, they had threatened the woman with death unless she dropped the charges. Under pressure from the committee and the GN, the police had assured the woman she would be safe until the case had been concluded, and the men had been warned by the police. Not only the complainant but also others associated with the case (such as family members and witnesses) were also similarly under threat. Assurance of police protection, they reported, was an important consideration in whether the victim and the witnesses would support the case or not. This was especially if the defendant was seen as a resourceful or violent figure.

Other accounts reveal that the capacity for police violence could be utilised by members of the community for their personal agendas. Sharing the example of a successful problem resolved, one retired 55-year-old management accountant from Mahagoda called Saman noted that there was a boy (around 18 years of age) from the area who had been drunk.³⁷ Saman had an argument with him in front of his house, and the boy had tried to assault him. Saman explained that he had then gone to the police for help, indicating that he had only wanted the police to frighten the boy. On his request, the police had taken the boy to the station and beaten him very hard. Saman had witnessed the police beating, and on observing his presence, the boy had, in Saman's words, 'begged him' to intervene and help release him

³⁷ Interview 1.3.6

from the police. Saman said he had complied with the request from the boy – ‘I told the police to release him, and the boy is now not seen in this village.’ Saman’s deep self-congratulatory tone was difficult to miss in our interview with him.

Another informant, an older woman whose younger brother had in an earlier year won the contest for the local council seats, described how he had been harassed by three of her cousins – children of an uncle of theirs, who had also contested the seat at the elections.³⁸ The cousins had thrown dirty water at her brother and had shouted in obscene language at him on the road. She had gone to the police and complained. According to her, the police had then taken her cousins to the station and tied them together as a punishment. The punishment had lasted until her brother asked them to be released later in the day. Many informants spoke similarly, i.e. casually and appreciation, of how the police carried out certain punishments and retaliation on their behalf. This was less so in the other sites, but even there, those with connections to the police contacted them for support during disputes – and were able to request violent or heavy-handed police responses on occasion. Brass has argued that violence results when people want to pursue ‘instant justice rather than enter into the network of power relations (1994:275). However, in this case, violence occurs within and as a result of networking with those in positions of power.

If people are suspected of particularly morally problematic acts, they may even be tortured or assaulted to death without censure by community. One account from the south involved the rape of a 10-year-old boy by two men, one of whom was 65 years in age and the other 23.³⁹ Both men had been arrested and according to the informant, beaten severely at the station. The older man had died as a result of the beating, we were told. The young man was injured but had recovered, but the case was proceeding in court at the time of our interview. A second death in custody, also involving a man accused of molesting a young boy, had taken

³⁸ Interview 1.17.4

³⁹ Interview 1.26.3

place that year. In both these cases, unlike that of the monk who had abused Prema's nephew (see previous chapter), the police responded with enough violence to have caused the death of these two suspects, although both these deaths were (I was told) officially attributed to illness. The man and the woman who shared these stories with me were unequivocal about how pleased they were with the outcomes – they saw them as two 'successfully resolved cases'.

In their explanations, they pointed out that the police action had been prompt and that they had acted in a way that "it was an example for the others [who might perpetrate similar violations] because they would be careful not to make similar mistakes, and the children of this area will be better protected." Clearly, the violence enacted by the police in dealing with the perpetrators was seen as an important deterrent and a protective measure for others. Other stories of violence towards those accused of various crimes were also collected from the different sites – with some sex workers having their hair shorn, and others accused of petty theft or public intoxication being beaten by the police.

In more than half of the cases which mentioned the police as a mediator, there had been mention of some level of assault, harassment or intimidation by the police either at the request of a villager or some other mediator or simply as part of their own response to a dispute. Where they themselves were not the recipient of such attacks, informants showed a surprising level of acceptance, even anticipation and appreciation for such violence. These stories concur with Brass's insight that people do accept a certain level of violence and atrocity from the police. He points out that there is greater concern about when a limit has been transgressed that can be used for political purposes (Brass 1994:277). Many of the informants in this study had witnessed the police engage in general assault and harassment at the homes of the suspect, in front of their families and neighbours. This finding concurs with that of a survey done by Transparency International Sri Lanka (TISL) in 2006 where

over 40% of the public agreed that police officers should be permitted to use torture on suspects to obtain confessions and 'evidence'. Interestingly, informants in this study as well as my research showed little distinction between a perpetrator and a suspect; it seemed as though if one was already in a position to be a potential suspect, then she or he had lost their claim to innocence and to protection!

Saman's story in which he is present to witness the beating is also not an unprecedented scenario. Basil Fernando (2003) documents two similar instances; the separate cases of Angeline Roshana Michael and of Eric Kramer, each of whom was suspected of theft. The police officer in each case was well-known to those who accused these people of the crime, and they were allowed to observe the assault. He suggests this was as if to demonstrate that the police were carrying out a favour for them and actively fulfilled his part as they wanted, perhaps because these were influential members of the community – Angeline's accusers were a very wealthy family in the area and Eric was accused by his employers, staff of a well-established national company. As such, he notes that members of the public are sometimes complicit (and even approving) witnesses of police assault and torture of those accused or suspected of crimes.

Unlike most of the human rights literature which documents concern and censure on police violence (AHRC 1999, 2004; Fernando 2003, Fernando 2009, Fernando 2005), these accounts showed that a significant proportion of citizens expected and accepted – and to a large extent justified and even welcomed – certain types of police violence as an important element of effective dispute resolution and justice-seeking. They saw the directed use of violence as productive and effective, and most importantly necessary for the deterrence of criminal or socially unacceptable conduct by individuals or groups. This viewpoint on police violence is not restricted only to Sri Lanka; Jauregui (2009) also observes that citizens

served by the police in the North Indian station in which she undertook her ethnography solicited and utilised violent and corrupt police practices when needed.

A concurrent fear of police violence

Along with the enthusiastic support for police violence, there was also uneasy acknowledgement that such use of violence could turn against them. Some informants reported that they would not approach the police directly even in a dispute or crime, because they were afraid the police would assault them, if the other party turned out to be more powerful. Such an account was in fact noted in this study in one of the disputes regarding tsunami-housing in the south. Two houses had been built under the auspices of one of the mudalalis, together with foreign support.⁴⁰ The mudalali gave one of the houses to a widowed destitute woman and her two children and the other to an employee of his who had also been affected by the tsunami. The houses shared a well, and the dispute had begun when the employee's family began to use a disproportionate amount of water for gardening purposes and the widow's family accused him of emptying the water supply. The employee, who had recounted the story, told us that he had approached the police because he wanted the dispute resolved. The police had visited both houses, and taken down statements. But when the mudalali who owned the houses indicated to the police that he thought his employee (who had taken the case to the police) was being unreasonable, the police had assaulted the employee instead. The two families had reached agreement shortly after about acceptable water usage.

In addition, informants mentioned police excesses, arbitrary or discriminatory use of police power, and corrupt and partial tendencies. The knowledge of this potential for police violence meant that, except for the very well-connected, most informants approached the police with some level of trepidation. And indeed this is evidenced by several cases in

⁴⁰ Interview 1.29.4

Fernando (2009) – one woman was raped and threatened by a the police officer who had come in response to a complaint she had made over the land dispute with a neighbour (495), Prasantha Kumara Francis who was detained and assaulted whilst at the station to collect a certified copy of a complaint with regard to the loss of his national ID card because his description matched that of someone accused of stealing a bicycle – when the accuser said it was not Prasantha, the police asked him whether he had a younger brother and where he was. He was tortured for over three days for stating that he did not know the whereabouts of his younger brother, and then finally charged with stealing a bicycle before being released (531-533). As one informant commented, “if the police becomes involved, then we always have a fear that they will beat us up instead.”⁴¹

Such comments disclosed a deep ambiguity in the community’s relationships with the police. On the one hand was the acknowledgement of the police – and particularly, their potential for violence and intimidation – as important mediators in disputes. On the other hand, this potential also caused deep anxiety. Police violence was not always guaranteed to be directed in a convenient or desirable manner. It depended, rather, on a number of other factors, part of which included who had the connections to impose upon whom, and whether the one or the other party could oblige the police to act in a particular way. In fact, the ability to direct police action was seen as a sign of empowerment and influence – and according to most informants, this ability stemmed from the social and economic qualities ranging from education and family history to wealth and occupation. Being in positions that commanded authority, resources and respect granted influence with the police, they noted. Most often, these were an overlapping mixture of politicians, wealthy businesspeople, people from traditionally elite backgrounds, those in respectable positions (such as teachers and doctors), and state officials.

⁴¹ Interview 1.29.4

The relationship between key mediators and the police

The formality by which the police were brought into the problem-solving process differed in the three sites. In the southern sites, there seemed no clear procedure to accessing the police. Some – mostly those who had some connections to or influence with the police – contacted them directly. Others were more reticent and preferred to do so through some known entity. In the central sites, the police were most often contacted by the GN or the peace awareness committee. In the north-western sites, the police were mainly contacted by the local mosque trust boards – and in Periyannagar, the board wrote formally to the police after informing the Grand Puttalam Mosque of its intention. Direct contact with the police was in fact tightly regulated, and could result in a fine of 2000/- rupees if contact was not sanctioned by the board. Where the conflicts occurred between local and displaced Muslims, the mosque trust boards first contacted the Minister of Resettlement, a national-level cabinet minister from the Muslim political party in coalition with the ruling party, who in turn indicated to the police how to attend to the matter. In any case, in almost all cases, police were brought into the picture through initiative of dispute resolution actors or mediators.

What is striking is that, the accounts show that it is not only villagers and members of local groups and committees who utilise the police and their legitimate capacity for violence in disputes and problem-solving. Rather, even mediators in official positions, such as the GN or other administrative officers, depend upon the police (and the associated threat of possible violence) to underline their own authority and to enforce their decisions. When there was anticipated communal violence in any of the sites, mediators informed the police as a precautionary measure, gave an overview of the circumstances, and indicated potential sources of trouble and disorder.

Police as a means of enforcing authority

As revealed by several accounts, mediators depended – to a considerable extent – on police support in order to garner greater authority and enforcement capacity to their positions. Those who were seen to be well-connected and able to mobilise the police were on the whole more effective and confident in their mediating role. The community's fear of potential police violence was readily capitalised upon by mediators and was successfully deployed to subtly threaten those who were defiant or persisted with their alleged misconducts.

For instance, Devika described how the peace awareness committee in Podimalwatte had managed the following positive outcome.⁴² The problem had involved a child who had stopped attending school in order to look after her younger three siblings while her parents worked on the estate. Devika and one of her colleagues from the committee had met with the parents on a Sunday to impress upon them the importance of sending their children to school. The main problem they discovered was that the husband did not give any of his income for his wife or children, preferring instead to purchase liquor, according to her. Aware that the family's restricted earnings were one reason the child was not sent to school, Devika has approached various individuals in the village, including the Samurdhi (social welfare) officer who began to take an interest in the family. Over the next two months, they had visited the family close to 6 or 7 times but without success. The parents listened to what the committee members and the Samurdhi officer had to say, but each week they had still not sent the child to school. The committee then decided to step up their endeavours. They had spoken to the District Secretariat about the children, and then when that did not work, they informed the police.

The police officer accompanied Devika in their next visit, and during the discussion, confirmed what Devika and her colleagues told the recalcitrant parents – that unless they

⁴² Interview 2.33.6

sent their children to school, they would have to face a lot of trouble from the police. According to her, after this visit, the parents readily agreed to send the child to school and had done so since. She had even heard that the father had warned one of his friends whose child had stopped going to school that there could be police trouble. Devika concluded that the peace awareness team “had done a great service.” This intimation – that those who disobeyed figures of authority in the community could expect to face troublesome consequences from the police – was a regular feature of stories from all three districts.

The threat of police violence was most successfully used by those mediators with a measure of authority and official status in the community. For example, following the post-tsunami awareness programmes on women’s rights which quoted from the relatively recently established Domestic Violence Act No. 34 of 2005 that assaulting wives and children was a punishable offence, many women in the community used the threat that they would report their husbands to the police for violence. While temporarily effective in stopping an ongoing assault, the most successful case was described by an informant who had required stitches after her husband broke a plate over her head for not serving his dinner in time; she had been attending to their 10-day old son instead.⁴³ At the hospital, the doctor who had treated her had taken her husband aside, and sternly warned him that if his wife suffered any further injuries again, he would report the matter to the police. Ever since, she reported with great satisfaction, he had not beaten her at all though they still fought and he sometimes slapped her. She attributed his change of conduct to his fear of the doctor reporting to the police – “he knows the police will listen to the doctor,” she said with a laugh. That mediators depend on the threat of police violence and intimidation to influence the problem solving process is illustrated from the accounts described above.

⁴³ Interview 1.34.1

Police partiality to the state and to the status quo

Because the police generally tended to follow the directions of key mediators such as GNs, council members, and politicians, the outcomes of each case reflected – unsurprisingly – the agendas and priorities of these members. On the whole, mediators were fairly confident that the police would support their stances in dispute processes – and indeed for the most part, this was evident in the stories. Even if more powerful mediators subsequently intervened to try and change a particular outcome, those who were already involved did not directly suffer any repercussions, especially if they did not contradict the orders of those who were the more powerful!

As has been shown in Chapter 3, disputes and problems arise from and continue to be situated in political, social and historical contexts that transcend the local and encompass the national and, sometimes even, transnational arenas. This also means that the problem-solving process is itself equally entrenched in these dynamics. National and global legal processes are recognised to intersect integrally with the politics of local community. This link between outcome, powerful mediators and the police incurred many protestations of partiality from those informants on the losing side. The police, they argued “always takes the winning side” (‘vaasi peththete hoiyya’, as one southern informant said⁴⁴), or “were only on the side of powerful people.” Here, powerful sides and people were not only mentioned in relation to the immediate local setting, but also the way that the powerful side was linked to even more powerful national actors and agendas. There was resentment and anger about such police partiality.

Moore (2001) has elsewhere argued that mediators are not the disinterested third party interveners made out to be in most dispute resolution literature and the setup of such mechanisms. Rather they have been observed to serve their own interests in shaping and

⁴⁴ Interview 1.39.12

influencing the outcome of a dispute or problem, even if this is only to preserve a particular status quo that benefits them – i.e. one where they are seen to be powerful and authoritative figures able to enforce their decisions. Paul Brass also points out that police actions cannot be separated from the prevailing political forces’ (1994:276).

In a number of accounts, the police were instrumental in upholding the social status quo and in reinforcing the authority of the mediators, even where these fell outside the boundaries of law. These included women travelling alone, late at night from work, socially inferior persons showing insolence to those from a superior background, children being disobedient to parents, or lovers meeting in public spaces. For instance, when a middle-aged man in Periyannagar continued to consume liquor despite numerous warnings and fines by the mosque trust board, the police had obliged the trust board by warning the man to comply with the commands of the board.⁴⁵ When he had defied the police warning, they had assaulted the man “only very lightly”, I was told by the mosque trust board member who shared the case with me. In this instance, he also recognised that drinking liquor was not necessarily against the law, but according to him, it was against acceptable community conduct. He described this as a successful case, where intervention by the mosque trust board and the police had been instrumental in the man giving up drink and becoming more obedient in the future. Similarly, Prema from the previous chapter condemned the way her nephew’s case had been brushed aside by the police, saying “the police just side with the big people (in this case the temple society and the monk); it is small people like us who suffer from their biased actions.” The policing of social behaviour which fell outside the legal realm was significant in that it ensured the dominant status quo and made it difficult for people to challenge those in authority, even in those cases where people felt they were entitled to or justified to their own actions.

⁴⁵ Interview 3.22.8

At the same time, mediators and others with official status reciprocated the favour by not being overly critical themselves when dealing with the police. Magistrates did not question police officers' conduct and neither did doctors nor other local figures of authority. For example, it has been recorded that many doctors do not probe too deeply into the causes of injuries on persons brought to them by the police. Fernando shares the case of RP Kavindra, a young disabled army soldier who was beaten by the police, after he fell into argument over a minor traffic violation (2009:301). He was assaulted stating that "you should show respect for the police certificate you took to get into the army." At the small local hospital to which he was taken the doctor only asked him his age and did not even examine him. These points accord with what Moore points out as situations of indebtedness built up as a result of past interactions as well as the desire to build up goodwill for 'anticipated future transactions' (1987:174). In addition, she notes the possibility of other grounds for invested interest in an outcome, including identification with one party to the dispute on grounds of 'kinship, friendship, educational-occupational status, age, or sex' (1987:141). Indeed, informants often indicated that their choice of mediator in a dispute or problem was based on past relationships or aspects of shared identities and social connections (which is explored in greater detail in Chapter 7), ensuring that the mediator was precisely an interested actor.

Police support for those mediators who were representative of state or government in one form or the other – the GN, the council member or the politician – reinforced the power of the state in everyday disputes. And because police power (and its threatening potential for violence) were wielded on behalf of these state agents, it was difficult for the villagers to question the police with regard to their actions – even those that could be considered excessive, discriminatory or arbitrary. For the most part, police actions in the form of assault, intimidation and harassment seemed to be condoned by these figures of authority, making it more difficult for the recipients of such conduct to challenge these.

Basil Fernando (2009) points out that the police do not facilitate, on an equally accessible and acceptable basis, the receipt of complaints from the public. Rather, the police are noted for their unsympathetic and hostile attitude to the public, extortion of money and favours in carrying out the routine duties of service, and their refusal to take statements in instances where they find it may implicate state officers, well-connected politicians and those viewed favourably by the state. Consequently, both Basil Fernando (2009) and Laksiri Fernando (2005) have made strong assertions that the police force is one of the most distorted and defective services in the country, serving the needs of the state at the expense of those of the public.

The police and the politicians

Along with many other scholars, Laksiri Fernando has problematised the high level of politicisation of the police force (2005). In his study, he identifies the influence of politicians in the police recruitment processes and believes that the subsequent relationship of obligation between the politician and the police officer compromises police conduct. Indeed in this study as in his study, the police often took their directives from local and national politicians with regards to the preferred action and outcomes of cases.

Offering an alternative analysis of these practices in her ethnography of the police, Jauregui suggests that the presence of politicians in a police bureaucracy is to be expected, given that ministers and presidential appointees form the political component at the top of the bureaucratic structures (2009). She argues that Weber also acknowledges the legitimate political in his version of bureaucracy and that what is perceived as political interference is in a way a very pragmatic and complex production of security and order. The disorderly or corrupt conduct often attributed to the police is, Jauregui (2009) claims, is in fact an intelligible and logical process. The actions of the police become understandable to us, even if not acceptable, when viewed in this way. Equally, it is important to realise, as she points

out, that the police themselves are not always powerful, neither are they the most powerful actor or group of actors in the country. They are required to take their cue from either their superiors at work or from other powerful figure in politics or the community.

Inaccessibility of police for minority groups

One striking feature of the accounts is that in those (few) cases where members of minority groups – i.e. the Tamils and the Muslims in this study – had directly contacted the police there was hardly any meaningful response from the police. Even in those cases which involved serious bodily harm (e.g. a stabbing in one case, and fractured leg due to assault in another), the police had refused to file a complaint or take any action, until the informants had obtained support for their application from the mosque trust board, the GN or politician. The presence of a key mediator – such as a well-regarded mosque committee member, a peace awareness committee member, a GN or a politician – changed the dynamics of the dispute in the central and north-western sites.

In contrast, the Sinhalese informants in the central and southern sites showed remarkable confidence in approaching the police directly in relation to their various disputes. One peace awareness committee member of Sinhalese origin commented that this was because of closer connections between Sinhalese residents and the police.⁴⁶ He attributed it to social affinity, ethnic solidarity, the lack of language barriers, and that the Sinhalese were better-connected to politicians who could speak to the police on their behalf. He shared one example where the police supported the Sinhalese family despite obvious indications that the Tamil party was innocent of the charges.

The dispute had begun when two children from the different ethnic backgrounds had fought on the playground and complained to their parents. The mother of the Sinhalese child had

⁴⁶ Interview 2.35.5

confronted the Tamil mother whilst she was returning from estate work, and had argued with her. This had ended with the Sinhalese woman heavily assaulting the Tamil woman. The Tamil woman had been badly injured in the assault, and had been unable to report to her work-duties the next few days. By the time that the neighbours brought this dispute to the notice of the peace awareness committee, the Sinhalese woman had already informed the police and made charges against the Tamil woman. Because the family was well-connected, the police had been reluctant to pursue the matter further.

Reasons for police (mis)conduct

The reasons why the police engaged in expected (informal and often harsh) roles in the mediation process requires some exploration. I was not able to carry out any interviews with police officers themselves for this study as explained in Chapter 2, but have looked at the available literature on police motivations for their conduct. Police officers in Sri Lanka have reported being penalised for taking decisions that did not agree with the views or interests of their superiors. A survey of the police force by Transparency International Sri Lanka (TISL 2006) suggests that many police are beholden to politicians, as suspected by Fernando (2009). In the survey police officers pointed out that they were often hesitant to arrest or prosecute certain members of the public if they believed that they would incur the displeasure or wrath of a politician, who could influence their transfer or chances for promotion through the forces. Police officers also felt some allegiance to politicians and to other high-ranking members of society and state administration because their acceptance into the police force had been facilitated by their influence. Therefore it seemed to them to be wrong to use the powers of the police to thwart the desires or interests of these people to whom they felt obliged for their position.

There was also the importance of being on good terms with local politicians as this helped to facilitate other everyday matters for police officers just as it did other members of the public. Senior officers sometimes also passed on requests from local or national politicians to junior officers, releasing or further harassing suspects in custody as required. Officers of lower rank who unintentionally arrested, detained or even questioned someone who was well-connected could earn not only the ire of the person concerned but also senior police officers or others in power who berated them for their uninformed actions. As such, junior police officers took their cue from superiors where possible and if unsure scrutinised the backgrounds of those whom they came in contact with in the course of carrying out their duties. Fernando asserts that continued political interference and influence in investigations result in many officers learning over time ‘to read what will be approved and not approved by their political masters’ to an extent that they would know when to avoid some investigations altogether (2009:143). At the same time, police officers are themselves aware that political interference and influence in police operations compromised their own efficiency as well as public perception of them.

Apart from these very practical implications, some scholars have focused on the nature of interaction and practices between subordinates and those in authority in Sri Lanka – and they suggest that subordinates are expected to acquiesce to expressed and implicit wishes of those in power (see De Silva 2006). Roberts also evokes Bourdieu’s (1977) concept of habitus to look at practices of social actors that ‘embody authority and subordination ... in situations of asymmetric power’ (1994:31). Bourdieu defines the concept as ‘a system of models of perception and appreciation, as cognitive and evaluative structures which are achieved through the lasting experience of a social position’ (Bourdieu 1980:131). Roberts (1994) and de Silva (2006) describes a style of interaction that contributes towards the reproduction and endurance of respective social positions, because subordinates do not challenge or question superiors and they must act deferentially to them. Perhaps this is why denials of

charges and protestations of innocence by suspects are seen as a challenge to police authority and the level of violence against them actually increases, as can be seen in the next chapter. Roberts (1994) points out that this form of sociality can compromise democratic practice in governance and key institutions of government. Unsurprisingly, this created a class of people in society protected from and immune to the system of justice in the country and who operated above the law, and conversely a class of people who experienced greater vulnerability as highlighted in the previous section.

Another factor could be attributed to the complex links between the police and the criminal world in prompting certain police behaviour. As discussed later in this chapter, in addition to kickbacks and monetary incentives that police receive in forms of bribes and favours, fear of the capacity for violence and retribution by criminals are also a factor affecting police conduct.

The police, law enforcement and criminality

As stated elsewhere, the police played a key role in the preparation of cases for prosecution, from investigative reports, procurement and protection of witnesses to supervision of evidence (known as ‘productions’). These are however precisely the most problematic aspects with regard to bringing offenders to justice (TISL 2006). As pointed out in their analysis, investigative capacities are limited by resource-poor facilities and technologies. Officers may produce evidence that is inadmissible in court, due to poor training; police officers may also experience other external constraints; political or hierarchical intimidation may persuade them to overlook evidence or close their files prematurely; and they may find it difficult to persuade members of the public to participate in investigations or prosecution as witnesses. With no or little training, presenting in court may be humiliating and frustrating

for many officers. The pressure to perform under these conditions, as can be seen below, lead to rather detrimental effects.

Tampering with evidence and making false charges

One of the most thought-provoking accounts I heard was shared with me by a lawyer from the Attorney-General's Department with whom I had been discussing the preliminary findings from my interviews.⁴⁷ He described a case in which he had been responsible for prosecuting a young man accused of drug-dealing in one of the villages close to the southern site where this study was conducted. The first trial had been successfully concluded – and the man given a heavy sentence – when the family of the young man successfully made a case for appeal and the case had to be argued again. The lawyer had been the prosecutor in this second round and the parents' clear description of the circumstances which had led to the young man's arrest caused him some doubt as to the solidity of the charges against him. Finally, irregularities in the way the arrest was made and the charges filed caused the young man to be acquitted. A month later, the lawyer had met up with the police officers who had been in charge of the case. In a humorous and non-threatening manner, he had shared his suspicions that the allegations had been falsely made. The police officers had laughingly admitted to the lawyer that had indeed been the case. The lawyer explained to me that the police had found the young man to be a 'problem' in the community, and had devised the arrest. In concluding the story, the lawyer expressed his sympathies for the police, reiterating to me that such police action stemmed from their levels of frustration for not having proper investigative skills and public support to make a 'real' case against this young man.

Stories of police tampering with evidence or falsely charging people were also included in the accounts I collected – though these rather stemmed from the police punishing people

⁴⁷ Interview 2:25

who had defied their orders. One informant from the southern site, a mid-level administrator in the nearest High Court, shared one case where one of his relatives had been the target of police retribution, after having come forward to give evidence against police wishes.⁴⁸ In this incident, police officers who did not want his relative to give witness had planted a powder similar to a crude form of heroin called 'brown sugar' in his vehicle, whilst having stopped it on the pretext to search the vehicle. The substance was then sent to Colombo for government analysis to determine there was a valid case to file. His relative had been remanded for a period of time, was made to pay bail, and to regularly visit the police station for increasingly unpleasant encounters whilst the case was being prepared. Almost 8 months later, the powder was proven to be a harmless substance by the Narcotics Department, and the case dismissed. What the informant wanted to note was that the police already knew there would be no case to file, but the pretext had been a means of successfully harassing his relative. The stress of the impending case had severely impacted the relative's wellbeing; it had affected the educational achievements of the children and the economic standards of the family. Such cases served to warn the community of potential police retaliation and kept most people, even lawyers, the informant stressed, fearful of challenging the police.

He also described some of the conduct he witnessed at the courts. He had been in charge of 'productions' (i.e. evidence) section at the courts and had witnessed the police substitute, remove or even destroy all or part of items required as evidence for ongoing court cases, practices also described by Wigneswaran (1994) as one of the biggest issues blocking proper administration of courts. Tampering with evidence helped break down the case, falsely implicate someone else, or lead to a reduced sentence. Additionally, in some of the other cases, police officers were responsible for changing case records and reports and for remanding members of the public on various (trumped-up) charges, including breach of peace or being a danger to oneself or others (Fernando 2009). Making a charge as a

⁴⁸ Interview 1.34.1

‘suspicious’ person under the Prevention of Terrorism Act was one of the easiest ways to target someone. One lawyer also shared a case where the court stenographer had been threatened by the police in order to change the court records whilst they were being typed in court, so that the witness in future hearings would become compromised and confused.⁴⁹ The falsification of evidence and of charges by the police has also been recorded elsewhere (Fernando 2009:535).

This phenomenon of the seeming simplicity of being able to arbitrarily create and destroy evidence is well explained by Fiona Riatt. She points out ‘ultimately, evidence is about telling a story, an account of people’s experiences, a narrative of events’ (2001:1). At courts, the rules of evidence determine what facts can be presented to a court, primarily depending on whether it is relevant to the case and how it was obtained. At each stage, however, there is considerable scope for human decision-making and human interference. This viewpoint is also stressed by Lawrence Rosen (1989) who focuses on how judges’ reasoning is influenced by what facts are provided by those in dispute, and who controls what facts can be presented to the judge.

Within the legal process itself, the police have considerable means by which to obstruct lawyers from carrying out their duties. For example, in some of the interviews that I had with lawyers, I was told that the police do not allow lawyers to be present when taking down statements despite active campaigns on this issue, nor do they allow easy access to the files or clients in custody. The lawyers indicated to me that sometimes it is necessary to include the amount of the bribe into the fee that they charge their client.

Attempts to address this situation have generally included the form of more training for more officers on concepts and practices of human rights and improvement of scientific calibre of the force. But Fernando (2009) points out that this approach has had little effect, since

⁴⁹ Interview 2:17

police officers act in an environment where certain offences do not get investigated and some people are allowed to get away with breaking or being above the law. In this context, they are unable to apply their training or use their resources in a meaningful way. The training may even serve to demoralise those well-meaning police officers enthusiastic to make a difference.

One thing which also becomes evident from these stories is that there is no straightforward way of arriving at the truth of an account in a dispute. Brass (1994) has pointed out that – in the absence of a core truth – courts, magistrates and inquiry commissions become important as there is no possibility to arrive at a conclusion. However, these stories suggest that the truth seem equally pliable to power relations in these settings. When this happens, there is no easy way of reaching a conclusion to a dispute that may be seen as ‘fair’ or ‘just’.

Police links to criminals: duality of motivating factors

More commonly reported however was the propensity of the police to associate with the so-called criminal underworld. This was the case in all three sites. Informants complained bitterly that alcohol and drug abuse was responsible for – or at the very least, implicated in – a number of violent events within the community, and that the easy availability of these substances had corrupted the younger generations, including for many of them, their own sons. As such informants were keen to address the issue.

In the southern site, for example, post-tsunami funds had been used to conduct a number of awareness programmes for young people about the problems related to drink and drugs. The public was also encouraged to report illicit manufacturing and trading activities to the police. The former GN, the chief monk and a number of local politicians had taken up this popular cause, and there were concerted efforts to rehabilitate those with addictions as well as small-scale manufacturers who had little other means for livelihood. But these recent initiatives

revealed a number of shortcomings in police conduct with regard to the disciplining of identified drug dealers and kasippu brewers.

A widespread allegation was that police officers treated drug dealers and other criminals in the vicinity with sympathy. Drug and alcohol dealers were rarely placed under arrest or subjected to any of the disciplinary measures generally directed towards other members of the community. Even when remanded, they were not assaulted and were readily bailed without much protest by the police. This alleged lenience towards this sector of community was the source of much anger and resentment.

These allegations were also upheld in the interviews I had with lawyers and others who worked frequently with the police. According to them, police officers would sometimes tip off illegal traders in advance of a raid, and they would confiscate only part of the illicit stock, which both helped to keep the trader in business and incurred a lesser fine and sentence if the case was completed at court. I was told of at least one incident where the police had accepted the trader putting forward a third party for arrest as responsible for the crime. In such instances, I was informed this would be a person already with a criminal conviction who would agree to spend time in prison for a mutually-agreeable sum of money. Furthermore, corrupt police officers who received complaints would inform the traders of the identity of those who contacted the police, leading to threats and potential violence against informants. The links between the police and the criminal world were purportedly facilitated primarily by bribes and the promise of favours, according to most informants.

But a few others mentioned another aspect; the dynamics of fear. These informants pointed out that violence was not only the province of the police in the villages. The capacity for violence – and even for armed violence – was also possessed by the criminal world. Police officers who failed to assist criminals, as well as their family members, received death threats. In these situations, most police of lower-rank are unable to guarantee their own

safety, of their colleagues or of their families, and as a result are forced at the behest of the criminal. One informant noted, “The most dangerous men are the ones that work on drug dealings. They make death threats, and they even visit their [i.e. the policemen's] homes and threaten the families with death. The police are afraid of them.”⁵⁰ Another, a middle-aged woman, who had experienced repeated domestic assault by her husband – even resulting in a damaged eye, noted that the police were afraid to chastise him because he was a well-known armed criminal.⁵¹ The more violent an opponent, the less likely the police were to act against them suggesting that police too were sometimes driven by the same fears of retribution as the public.

This fear also mediated the extent to which the police were willing to follow politicians’ directives. For example, in Periyannagar, there was a recurrent problem of flooding, and water stagnated on the roads causing malaria incidences to rise in the village. The mosque trust board wrote a letter to the Resettlement Minister who undertook to build canals along the roads. One man named Hassan refused to allow the canals to be placed in front of his house. He was, I was told, the only man of local Puttalam origin amongst the displaced Muslims in Periyannagar. The mosque trust board president who shared this story mentioned that Hassan was not generally liked in the village.⁵² He had married a displaced woman and they had made their home in the resettlement village but Hassan tended to treat the other village residents with disdain. Unable to persuade him otherwise, the mosque trust board had written to the Grand Puttalam Mosque, who communicated to him requesting his cooperation in the matter, but this was ignored. Instead, he had scolded the mosque president in obscene language for making the matter a public one, and damaged his house and shop. Following the usual protocol, the mosque president had alerted the police, but the

⁵⁰ Interview 1.39.4

⁵¹ Interview 3.15.8

⁵² Interview 3.1.12

police did not take any action, which according to the president meant they had sided with him. The president attributed this to Hassan's powerful local gang connections.

The president then had informed the Minister for Resettlement and he in turn instructed the police to take stern action. The police had then taken down an official complaint from the president against Hassan and requested Hassan to apologise. A few weeks later he had again assaulted the mosque trust board president, and at that point, the Grand Puttalam Mosque fined him 30,000 rupees and gave him a hundred whip lashes as punishment. This did not stop Hassan's continued belligerence. The police again did not do anything following these attacks. The president intimated that some of the police enjoyed good relations with these criminal groups. These stories and other similar ones suggest what Brass describes (1994:275) as 'the hidden truth of the nature of intimate connections' between the police and the criminals, and the police and the politicians. However, because of the layers of reciprocity, obligations, and fear that govern these relationships, there is no straightforward simplicity to these connections.

The context of police violence: conflict, militarisation and legal impunity

In order to understand police conduct as described in the accounts and in the sections above, it is necessary to look at how the capacity for violence developed as part of police culture and more importantly, how it became legally sanctioned. The capacity for violence increased amongst the police following the counter-insurgency campaigns of the 1970s, 1980s and 1990s, as well as the introduction of the ER and the PTA (Fernando 2003). These removed key legal safeguards against extra-judicial killing and cruellest forms of torture and human rights violations for those who were suspected or detained under these laws, and derogated fundamental rights granted in the constitution (de Silva 1993). Police also quickly aligned themselves with the state after several police officers were killed and police stations

attacked during the militant 1970s and 1980s. The creation of the Special Task Force by Special Committee in 1983 marked the beginning for the police to take on quasi-military responsibilities in modern Sri Lanka (Fernando 2009). Attached to the Police Department as a para-military outfit, the STF functioned directly under control of the Ministry of Defence. The police and the armed forces were given unprecedented powers under new, hurriedly-drawn up legislation and regulations; for example police officers of a certain rank could decide whether a corpse could be buried without a post-mortem. This enabled the disappearance of several thousands of people in the 1980s, and even today there is considerable difficulty to insist on judicial process such as the 'habeas corpus', i.e. the compulsory production of someone in custody before a judge or magistrate. Additionally, different rules apply for what may be produced as evidence in court, for example confessions are admissible under the ER and the PTA even where they are denied before a judge although confessions cannot be used in court for common crimes (TISL 2006).

The habits of normal law enforcement gradually eroded in these circumstances; the access to easy power, an atmosphere of immunity and almost complete lack of accountability meant that police officers developed attitudes by which they and their actions were above the law. An inevitable consequence has been the widespread brutality of the police in Sri Lanka in the course of performance of their everyday duty, even in non-conflict settings. Fernando (2003:1) notes that the cases of torture recorded in Sri Lanka are 'exceptional in that torture is liberally used in common crimes or mere grievances between a police officer and the victim'. More problematically, assaults do not only constitute any (misconceived) efforts to obtain information, but rather sometimes are simply an ingrained part of the immediate interrogation or even pre-interrogation phase and in some cases appear to be a form of evening entertainment in police stations (see also Fernando & Puvimanasinghe 2005, Fernando 2003). Indeed, many police officers argue that a certain amount of assault is necessary and permissible in investigations, as much as 68% in the study by TISL in 2006.

The culture of impunity for assault and torture in the police is evident in that it is an openly acknowledged and even informally regulated part of police activity (see for example Fernando & Munasinghe 1999). In detailing his cases, Fernando (2003) describes the (frighteningly) orderly and leisurely manner in which acts of torture and violence are carried out in police stations. Those in command give out orders when and how to assault a person who has been detained, and they can put an end to it. For example, if one of those in command believed that the assault had gone on long enough, officers who return to continue the assault may be asked to stop. The assaults are led by one or two of the officers, carried out in a group, often at night and officers get progressively drunk in the course of carrying out the assault (Fernando 2003). These acts suggest that torture and violence is accepted institutional practice, one death in custody a week by some reports (see also Fernando 2005, Puvimanasinghe 2005).

Police officers are aware that victims of torture have very little scope for redress. Until 1994 when the Prevention of Torture Act was passed, officers accused of torture and other human rights abuses were both prosecuted by and defended from within the Attorney-General's office, leading to much confusion and contradiction within the justice process. Explaining this in detail, police officers have been noted to have openly advised victims against pursuing redress. Fernando (2003) argues that they are assured of their ability to escape accountability and that the system will act for their protection rather than that of the victims. This is demonstrated by the fact that only two officers have ever been convicted under the Act. Some have been settled through compensation (Weliamuna N.D.). But there is no public record of in-service disciplinary actions against perpetrators of torture, even where the Supreme Court has directed this.

Furthermore, investigations in cases of alleged torture are conducted by police officers at the Torture Unit at the AG's Department, but because the unit does not have permanent cadre,

investigations are mostly carried out by regular police officers, either at the Special Inquiry Unit or the Disappearances Investigations Unit within the Criminal Investigations Department. The National Human Rights Commission conduct independent investigations for torture and disappearance cases, but the AG's Department is said to prefer those prepared by the regular police force. Furthermore, those who report or give evidence of torture cases are often threatened, subjected to abuse or even killed (Fernando 2009). Several commissions have been appointed over the years with a view to strengthening police services and effect reforms. These include the 1946 Justice Soertsz Commission, the 1970 Basnayake Commission, the 1995 Jayalath Committee, and the Commissions of Inquiry into Involuntary Removal and Disappearances set up in 1994 (Pinto-Jayawardena 2005a). Their reports are available to the public with some limitations but again are widely criticised because their recommendations have not been seriously implemented.

The National Police Commission: an attempt to increase accountability

Concern about the lack of implementation of impartial police disciplinary measures amidst an intense politicisation of public services during the 1980s and 1990s led to the establishment of the National Police Commission (NPC) in 2002. This was mandated by the 17th amendment to the Constitution introduced in 2001. The NPC was the first legislative mechanism designed to create public confidence in the rule of law by ensuring proper disciplinary control and due procedure in matters of police administration (Pinto-Jayawardena 2005b). These covered appointments, transfers, promotions, disciplinary control measures and dismissal of all officers (except for the IGP), formation of schemes, improvement of independent and efficient services, distribution of arms and ammunitions to police divisions, dealing with public complaints, and setting procedures for the investigation of such complaints. Also, the NPC was mandated to receive public complaints on any abuse of power by the police. This included many of the actions already described in this chapter,

ranging from the violation of human rights; torture, inhuman or degrading treatment; injury or death in police custody; fabrication of cases and making false reports to court; interference, intimidation and threat; neglect of duties; illegal arrest and detention; refusal, failure, or delay to record a statement; partiality; and use of abusive words.

Since its inception the NPC have experienced a number of procedural inadequacies that inhibit its effective functioning and accountability. The NPC does not have the technical and administrative capacity to deliver its duties, and there is regular political interference in its operations and initiatives (Pinto-Jayawardena 2005b). Notwithstanding these difficulties, the NPC intervened to prevent a number of politically motivated transfers of police officers prior to elections in 2004 and disciplined those officers found to have violated human rights. The NPC also recalled the decision to delegate responsibility of police discipline to the IGP in mid-2004, resulting in strong adverse reactions from ministers supporting the IGP's control over internal discipline and questioning the need for an independent Commission. The NPC however was not well-regarded widely, a public survey showed that almost half of the public did not know of its existence and almost half of the police did not see the NPC as an impartial body (TISL 2006).

In 2006, the Commissioner to the NPC was appointed in contravention to constitutional stipulations, a move that was seen as undermining the Commission's credibility (TISL 2006; AHRC 2006). In 2009 when the terms of the Commission and its Chairman ended, new members were not appointed and the NPC became defunct and was only reinstated in 2012, in response to recommendations from the Lessons Learnt and Reconciliation Commission, a state-initiated consultation process conducted in the post-war era of Sri Lanka. However, its mandate has now been reduced to dealing with examinations, transfers and disciplinary matters and to investigate public complaints about police misconduct.

Zero tolerance policy and community policing

During 2005 to 2006, criminal activity in Colombo and elsewhere were reported to rise significantly, associated with organised criminal activity amongst army deserters, though this was not officially confirmed (INFORM 2006). Several instances of armed robbery and burglary led to public demand for better policing. In response, the state adopted a ‘zero tolerance policy’ and stepped up crime prevention strategies from 2005 onwards. The rationale was that maintenance of law and order as well as promotion of deterrence (i.e. a fear of committing crime) would contribute towards crime prevention. The emphasis however was on the maintenance of order much more than law. The focus was on minor misdemeanours such as littering or disobedience of traffic rules. To implement this policy, the size of the police force was increased significantly and more police officers were deployed on the roads in Colombo and elsewhere. Night patrols were introduced, vigilance schemes set up, traffic fines were raised, stricter enforcement of traffic rules was ensured, and apprehension of small-time peddlers of drugs and illicit liquor was carried out. There was a link to the then escalating war as well; amongst the measures introduced were initiatives such as ‘strangers’ night’ in which police conducted cordon and search operations in selected areas ostensibly targeting fugitives, drug abusers and criminals of any nature, but more practically requiring households to account for each of their occupants at these times. These searches were more intensive and frequent in Tamil-majority areas in Colombo, and as 2008 progressed, households were required to register all regular occupants with the police and to be able to explain unexpected guests or tenants during such operations.

This period of time coincided with an increase in the number of serious crimes such as abductions, disappearances, and murder committed by criminal elements within the police together with soldiers and deserters. In 2007, the IGP admitted in a newspaper, the Daily Mirror, that a ‘large number’ of police officers and troops had been arrested on charges of

abduction and extortion (Fernando 2009:142). The concept of community policing was subsequently emphasised and civil committees that liaised with the police force were introduced in 2008; its main focus was on public security in light of the escalating war in the north of the country and a growing fear of possible refuge of militants in non-conflict zones and terrorist attacks in different parts of the country. In these circumstances, almost three-quarters of people surveyed indicated that they would report to and inform the police of suspicious persons in their neighbourhoods as it would increase their sense of safety and security (TISL 2006).

Some people saw these new incursions into civilian life as evidence of an emergence of a police state and as a paradigmatic shift that undermined the rule of law. For example, the reports from the Asian Human Rights Commission took on increasingly dire tones (see AHRC 2008, 2009). This sense increased when the war on terror morphed into a war on alcohol and drugs and later a war on crime following the demise of the LTTE militarily in May 2009. As these new policing wars gathered momentum, several of the most notorious criminal leaders were killed in custody or after immediate apprehension under rather suspicious circumstances. Such deaths were attributed by the police to necessity, stating that suspects were trying to escape or of attacking police officers; subsequently these deaths were not investigated. The expansion of military and police into civilian life has continued apace. After the war, rather than demobilising the forces, the government has stepped up military involvement in everyday life, from development to business activities being conducted by security forces and the police.

Compromising of the judicial system

At the time of the research, lawyers I interviewed also suggested that there was gradual undermining of the impartiality and independence of the judicial system. Criminal lawyers as well as those who were representing clients against police misconduct were requested to

collaborate with the police or to experience harassment. For example, in September 2008 two lawyers representing complainants against the authorities (a bribery case and another fundamental rights case where the client was assassinated to prevent them from giving evidence) received death threats from sources associated with the police. The same day, grenades were thrown at the house of a senior and well-respected lawyer, J C Weliamuna who had appeared in several cases of corruption and human rights abuses. The next two months also showed that the impartiality of the judicial system was under threat (see Fernando 2009a who details the following events). In October 2008, an announcement was sent to the registrars of all courts and to human rights lawyers well-known for representing those accused of offences relating to the conflict in the north and east of the country, describing these lawyers and anybody who represented suspected terrorists as traitors and threatened with death. The Bar Association together with national and international bodies requested an investigation but none was carried out. In November 2008, the website for the Defence Ministry carried a report titled ‘who are the human rights violators?’ dealing with 9 cases filed in the supreme court under the fundamental rights jurisdiction. Alarmingly, the report only singled out the Tamil lawyers.

In keeping with the prevailing situation, judgements at High Courts on cases filed under the Convention against Torture Act No 22 of 1994 began to acquit the accused in an unconventional manner (Fernando 2009); in one case, although the police admitted to using ‘minimum force’ to subdue a person who had been falsely implicated, the court ruled that the accused police officers had not carried out the assault that led amongst other injuries to renal failure although the injuries took place whilst the victim was in police custody. In a biting article carried in the Sunday Times on the 19th of October 2008 about this and another similar case, Kishali Pinto Jayawardena notes with incredulity the judicial requirement that there be direct eyewitness to torture for a conviction to be made, something which she notes unlikely (Fernando 2009:222). Similarly, in another judgement, the court ruled that whilst

there was excessive use of force, it did not fit the definition of torture under the Act although the medical report listed the following injuries and actions: beaten several times with hard objects, loss of hearing from being assaulted near the ear, irreparable damage to the wrist from being handcuffed to a door which had been banged shut several times, a person who he was told had TB had been forced to spit in his mouth, and his fingerprints had been forcibly placed on a grenade and a false charge made against the victim (Palitha Tissa Kumara's case in Fernando 2009, also see Puvimanasinghe 2004). These judicial developments meant that there was no recourse for citizens subjected to police excesses and abuses of power.

Conclusion

In this chapter, I have attempted to show the significance of the police in everyday dispute management and to examine their role in shaping dispute outcomes. I have shown that the police tend to support those in authority, and especially other influential or powerful agents of state or government. This shores up the power of the state in dispute and problem management at community level, and works to retain the status quo. It also works towards having the power of the state used by citizens as a blunt instrument of restitution. The police utilise their legal mandate as well as their potential for violence to bring this about. I have shown how both villagers and key mediators rely on this capacity of the police to reinforce their own authority and for protection and safety from other violent elements in the village. This compromises their ability – and willingness – to speak out against instances of police misconduct or excessive and arbitrary uses of power.

Instances of excessive and extensive violence from the police have been routinely recorded, and are corroborated in these accounts as well. Torture, assaults and beatings are common practice, as is tampering with evidence and the filing of false charges. The police appear to function with impunity, given that many of the legal safeguards against police violence have

been removed in response to the armed conflicts of Sri Lanka. Other dynamics that influence police behaviour and motivation include the reciprocal power dynamics with political figures and state authority, and also links to the criminal world. Police are motivated by both incentives such as promotion and monetary gains, as well as a fear of retribution from superiors and from criminal elements. It is important to remember that the police are not the most powerful social group in Sri Lanka, and certainly not the individual members of the police force at lower ranks, a point also made by Jauregui (2009) in relation to her own work in North India. Particularly revealingly, social and cultural expectations and norms are one of the most important underlying factors. Brass recognises that most people acknowledge the police should be brought under control but most seek to try and bring the police under their own control, they 'seek to bring the police under their control, to oversee recruitment, posting and behaviour, and to insure they work on their behalf rather than on behalf of their enemies' (1995:274). Moreover, he points out that regular (if not routine) violence by the police is a recognised part of the network of power relations among police, criminals and politicians – it should not, as Jauregui (2009) states, be seen as an anomaly, as a failure that needs addressing and overcoming. Rather, 'where an event occurs, the police do not necessarily act in the role of the upset victim, In most cases, the court case is also a lonely and humiliating affair for older people who may not be able to remember all the details. Brass (1995:275) also indicates 'that the police simply enter into one side or another of a local conflict or confrontation with the state' and not as an agent of the state either.

Basil Fernando who has one of the most astute insights into the current operations and shortcomings of the system also says, 'Work to improve Sri Lanka's justice system, then requires a concerted effort to direct public opinion for support to changes to the administration of justice (2009:x). This will require considerable time. I also argue that measures are first needed to understand the social aspects of the political structure of Sri Lanka, the relationship of patronage, police-community relations and more importantly

public complicity in the brutality of the police – and indeed the state, with a view to later addressing these issues. Many require different types of personal decisions – not just institutional responses – and they need enabling conditions. We need to examine the social workings of policemen and women more closely. I now turn my attention to two particular aspects of social relations – suspicion and uncertainty – which play a significant part in enabling violence to occur, and in allowing people to concur with violence being done.

In the next chapter, I hope to show how this capacity for police violence – frequently deployed on behalf of different agents of the state – is used to target those who are seen to be suspect in different ways. I will argue that those who are deemed to be politically suspicious, i.e. a threat to the state, are more vulnerable to the excessive and arbitrary uses of police power in the prevailing security context of the time. Suspicious persons and suspicious conduct were defined in changing socio-political terms rather than in the individual categories of action and intent.

Chapter 6 Suspicion and Vulnerability

In this chapter, I present three detailed accounts in which I examine the politics of suspicion and vulnerability to violence in the current security context of Sri Lanka. The chapter illustrates how the dynamics of the ongoing conflict permeated even the non-active conflict zones and were felt in the everyday relationships between the state and citizens, especially for those perceived to be from a ‘suspicious’ background. It also reveals how ordinary citizens integrated the use of these conflict dynamics as part of their tactics to handle disputes and manipulate problem-solving processes against those who could be made out to be as ‘suspicious’. In particular, I look at how those who are seen to be suspicious are vulnerable to excessive and arbitrary police actions during dispute and problem management processes.

I also present a brief outline of the situation of war at the time of the study, and examine how the parts of the state used the conflict to protect itself against criticism and avoid accountability, and kept expanding and broadening the categories of suspicion. Suspicion also proved to be a sticky sentiment attaching itself not just to those who belonged to suspicious category but also to those who associated with those perceived to be suspicious. Finally, I examine the ways individuals and groups attempted to circumvent the suspicion directed towards themselves or the ones they loved, recreating themselves in line with the narrow categories of person identified and accepted by the state.

Dev Ayya and his niece from the North

Dev Ayya is a 56 year-old retired coolie worker from Mahamalwatte.⁵³ He has two adult sons, both of whom were well-employed, and the family generally enjoyed a comfortable

⁵³ Interview 2.34.7

existence. In the 1970s, following violence on the estates, Dev Ayya's eldest brother had moved to Jaffna, married, and settled there. The rest of the family had remained on the estate. Dev Ayya's younger sister lived nearby and had three adult children, the eldest of whom was a young man of marriageable age. For some years, there had been talk of a "cross-cousin" marriage within the family to reunite the increasingly estranged families, more specifically, the marriage of the sister's eldest son to the (Jaffna) brother's daughter. The young man had gone some months ago to the North, stayed with them for a few weeks after the proposal was accepted, and had then accompanied his betrothed Jaffna cousin back to the estate, where the wedding was to take place and the necessary arrangements were underway.

Shortly after her arrival, Dev Ayya and his nephew took his niece, Krishanthi, to be registered at the Gampola police station. This was, he let us know, "the country's law" which stipulated that Tamil persons arriving into any part of the country other than where they resided should register with the nearest police station. Here an unexpected and distressing event had occurred. The police alleged a discrepancy in her national identity card number, and detained her under charges of suspicion. Dev Ayya was of the opinion that "it was because she was from the North that they were suspicious" since he was convinced that all was in order with her identity card. Despite the appeals of her two male relatives, Krishanthi was kept back at the station, and they had to return without her.

On reaching the estate, they had promptly contacted the local council member. Having been their neighbour for many years, there was some understanding and relationship between his and Dev Ayya's families, and he proved easy to mobilise on the matter. The council member helped them to get in touch with a lawyer he knew from Gampola. Taking it as a personal matter to help a friend, he had also contacted some of his (political) acquaintances. For most of that day, Dev Ayya continued to call on other individuals who he felt might

provide useful support for him, on behalf of Krishanthi. This included the peace awareness committee, and the GN himself. Both proved supportive. The awareness committee added their voices to his in applying to the local council member, and the GN had called the police station to recommend the release of Dev Ayya's niece and to confirm his personal knowledge and positive opinion of Dev Ayya and his family.

The way in which Dev Ayya described how he had systematically approached those people who were in positions of power and who had some personal obligation and contact with him recalls the 'uncertain edges' and 'blurred boundaries' between the state and society as put forward by Timothy Mitchell (1991) and Akhil Gupta (1995) respectively. As can be seen here, state agents themselves function within a network of social relations, and moreover, they are unable to resist being drawn into disputes in one side or the other, precisely because they are simultaneously an agent of the state and the friend, neighbour, or relative of one of the disputing parties. Indeed it is this multi-valence dimension of the person which makes them an attractive option as a mediator for most people. Philip Abrams' point that people utilise (and value) the hidden political power of the structures of the state is amply demonstrated here (1998). State agents are often knowingly drawn into the negotiation process, and utilise the power of the state for the benefit of their own or of those with whom they have significant social relations, making the power of the state personalistic in addition to what I discussed in the previous chapter – i.e. how the power of the state can also be used to maintain the status quo.

The following day, Dev Ayya and his nephew then returned to Gampola. They took with them the necessary papers and documents demonstrating the ongoing marriage arrangements, their connections to her family in Jaffna, and the nephew's identification papers. They engaged the services of the lawyer recommended to them by the council member. He proved to be very helpful, prepared the case that very day, and approached the

police station with Dev Ayya and his nephew. Dev Ayya, aware of the necessity of not taxing the goodwill of the police by too vociferously refuting any cause for suspicion, as had happened the previous day, let the lawyer speak to the police on their behalf.

However, the situation suddenly evolved into a more complicated affair. Just as the applications were being made to secure her release, a petition arrived from some of the village members. The petition made a number of accusations against her background and character, and concluded that they did not want her residing in the area. These allegations were based on the fact that she was from the North and therefore was ‘suspicious’. It also made another allegation – that she was pregnant with Dev Ayya’s nephew’s child and therefore, the petition declared that the village members could not accept someone of such morally questionable character. The use of public petitions as a means to pursue personal animosities and harass an opponent in a dispute case is a well-recorded phenomenon in Sri Lanka (see Spencer 1999: pp222-3). They often function (as it does in this case) to signal to decision-making authorities that they have another set of sensibilities and agenda to consider, and to insert some uncertainty around the moral and social stability of the person or family targeted.

According to Dev Ayya, this was the work of some people in the village who were jealous of him. He confirmed the truth of the allegation of pregnancy. However he could not imagine how the villagers had become aware of the situation – perhaps his nephew had mentioned this to his friends, he thought. Dev Ayya explained to the lawyer and the police that this ‘incident’ had happened when his nephew was in Jaffna making the arrangements for their marriage. He also voiced to us – as he had earlier to the police authorities – the family’s disapproval of the niece’s condition, and concurred with the general opinion that this was wrong conduct before the marriage had formally taken place.

This development dashed the hopes of securing an early release. The police, on the verge of being convinced to release Krishanthi, now appeared hesitant. Dev Ayya and his nephew (and the lawyer in this case) were sent back to secure identification papers about Krishanthi's family in Jaffna. However, when these were brought to the police station, there was little interest in perusing them. There were further delays during which time Dev Ayya suspected that some of the villagers had made contact with the police station through their own connections in order to strengthen, as he put it, their allegations about his niece and both their families. In spite of the many requests to investigate the motives of the villagers who had prepared the petition, the police decided that they would now take a different response, and continue to detain her for further investigation.

Dev Ayya noted that by that time, he and his relatives were in despair. They returned to the estate for the next days for further discussion and to seek whatever other support they could. The local council member and the GN made stronger interventions by travelling to Gampola, and together with the lawyer and Dev Ayya, appearing at the police station. Concerned that any appeal on the basis of trustworthiness would now prove futile, they asked the police to release the niece in recognition of her vulnerability, i.e. the pregnancy. The intentions of the families to marry the cousins immediately were put forward, and the importance of this for the wellbeing of the future child was impressed upon the police. Attention was also directed to the young mother's wellbeing and that of her unborn child, and the undesirability of keeping a young pregnant woman in detention. The local council member reiterated his knowledge and connections of Dev Ayya's family and offered to ensure the young couple's marriage. The negotiations between the police and those of the GN and the local council member reveal the fragmented nature of the state, with its multiple agencies and sometimes conflicting agendas (see Das & Poole 2004 for further examples).

The police took some more time to deliberate the matter. Finally, they agreed to release Krishanthi but under conditions of bail. In his account of the incident, Dev Ayya attributed her release to the “utmost support of the local council member and the GN.” He was convinced that the police would have continued to detain her if not for the supportive actions of these two people. He also credited the sincerity and support given to him by the lawyer. He stated his opinion that the police had refused to drop the case altogether in deference to the villagers’ petition. The matter was then referred to court, where it was, at the time of Dev Ayya’s interview, still continuing. The lawyer was engaged to see the case to its completion, and they had subsequently met him on a number of occasions. He had advised that an early marriage between the two cousins would help to strengthen the case when it did arise at court, and contribute to her acquittal. As a married young woman, she would more likely avoid rousing further suspicion and the marriage would confirm their intentions for bringing her from the North. The wedding was already arranged and was to take place a few days after the time of this conversation.

In reflecting back on the situation, Dev Ayya voiced his sorrow at the current situation and difficulties his family had faced, especially in relation to an event that was meant to be joyous and momentous. He attributed the cause of the incident to the ‘security situation’ of the country, pointing out that many people faced problems similar to what his niece had, but that there was little one could do about it. The many references in Dev Ayya’s story to his niece being “from the North” and therefore a source of ‘suspicion’ points to a recurrent theme in some of the interviews collected from the central and north-western sites of Sri Lanka.

Being from the North where the war was going on

Dev Ayya’s niece came to stay with her family in the central highlands during the same period of time as when the Sri Lankan government was stepping up its military incursions

into the north. Emboldened by victories in the east of the country, they were targeting the north by the end of the year. This involved full-scale military attacks on the Northern Province, including the use of multi-barrel rocket launchers and other aerial attacks to shell and bomb areas, prior to sending ground troops. The LTTE responded by carrying out a series of bomb attacks on buses and in public spaces, and guerrilla raids on police, military and civilian targets. These efforts were designed to heighten nationalist Sinhala sentiments and provoke retaliation against Tamils, thereby lending credibility to LTTE claims of persecution and discrimination. This campaign to spread insecurity in the south of the country worked successfully, with many in the majority community in active support of the war and in tacit acceptance of the increasing costs of the humanitarian crisis unfolding in the north, the brunt of which was borne by the Tamils (ICG 2008, ICG 2011).

The government worked to ensure minimal media coverage of the military campaigns. Independent observers, aid organisations and journalists were restricted from conflict zones, and even government doctors who reported on the number of civilian deaths and injuries they had encountered in the hospitals in and around the conflict zones were arrested upon their departure from the conflict area. Critical comments and calls for accountability were met with harsh measures: journalists were killed, beaten or silenced, politicians who raised these matters were threatened, NGOs attacked and brought under intense surveillance, and international organisations intimidated and harassed. In fact any criticism of the government military strategy was treated as pro-LTTE sentiment (legitimate grounds for being detained under the PTA) and many of those so labelled were verbally attacked by government officials, partisan media and hardcore nationalists. Although initial suppression was related to criticism of the military strategy, some of my colleagues reported that in state institutions *any* criticism of the government could be treated as suspicious and indeed even as treacherous.

Along with the lack of information from the north, there were also the rumours that cadres from the north were seeking to integrate into other parts of the country in order to create disruptions and instigate attacks at some point in the future. These caused people to be on alert for ‘suspicious’ people who may be LTTE militants. To compound matters, the north had been inaccessible to the vast majority of people for several decades. As a result, there had been no exchange and very little knowledge for the most part about the population, their politics, their conflict-related experiences, their economic and social situation, and even about their geographical density. As the war progressed, some conversations indicated that for some people, the vast areas of the Northern Province were empty save for LTTE training camps, which were therefore legitimate targets.

Stories about ‘suspicion’ and how it had been the source of many problems were shared by various informants. The contexts were slightly different but references to suspicion within the current ‘security situation’ always came together with accounts of substantial, often disturbing, impacts. Suspicion and charges of ‘being suspicious’, though not an easily apparent feature in day-to-day interactions, seemed part of the atmosphere of these villages. It flowed through the relationships and erupted as a social force in situations of conflict and dispute as indicated.

Categories of suspicious persons

The ongoing war against the Tamil militants, which was taking place in the northern parts of the country meant that ‘being from the North’ was one of the categories of suspicion. To be from the North of the country was, in some way, to possess some possibility of having associated with, being sympathetic to, or connected to the militant movement. Being Tamil itself was often similarly to be suspect, although this was sometimes modified by other factors – for example, a professional Tamil such as a doctor or accountant or one from Colombo was seen as not being quite as suspicious. Belonging to a category of suspicion

could lead to a number of problems, both in the encounter with authorities (as in Dev Ayya's case) but also in everyday interactions with other people, although more consequential when it was with the authorities.

For instance, Gayathri, a 38 year old woman from Podimalwatte, who was a native of the North but had married a Muslim man and settled in the estate described some of the problems she had encountered after moving to central Sri Lanka.⁵⁴ She and her husband had met whilst working in a rice milling factory in the East of the country. Theirs was a love marriage, and had taken place against their parents' wishes. Gayathri was born to a Hindu family but when she married her husband she had converted to Islam. She said she was happy with her husband and their marriage, but her decision to marry him and live in Podimalwatte was not without problems. When I first came here, she said, people in the area had "looked at her with suspicious eyes because I was a native from the North. They thought I might be a member of the LTTE! It was the time of troubles in the North." The Muslim and Tamil people in the estate were more tolerant, in her opinion, but the Sinhalese especially did not like her.

When she was pregnant with her first child, she had gone for prenatal care to Mahamalwatte. (This was before it had become a predominantly mixed village.) At the clinic, her identity as a woman from the North had been revealed, partly because she could only speak Tamil at the time, she said. Some of the Sinhalese at the clinic had chased her out and had tried to assault her. Fortunately, she was accompanied by her husband who had seen what was happening and had intervened to protect her. He had explained to the group that she was his wife, and had converted to the Muslim religion; he stressed that she was not a Tamil any more. Over the years, the suspicion she had encountered had lessened, she said, especially since she mostly used her Muslim name and had also picked up fluent Sinhalese. According to her,

⁵⁴ Interview 2.26.6

these days it was only sometimes, when her birth certificate or her identity card was used to identify her place of birth, that she experienced any such problems.

Being a person from a suspicious category clearly caused some vulnerabilities – a higher probability of trouble in encounters with authorities such as the police, but also, as Dev Ayya emphasised, people could use this element to create problems for others. He elaborated on this by saying that, while many in the village were good people, some would take advantage of the situation to get back at others they were jealous of or angry with, as they had done in his case regarding Krishanthi. Making false allegations was likely to cause further harm to a family who belonged to a suspicious category, and jealous people, he argued, often made use of this opportunity.

Being detained under the PTA and ER

Detention under the serious charges of ‘suspicion’ left few options for families whose members had been detained. These arrests, unlike those in relation to criminal cases, were regulated by the PTA, and together with the ER which were still in place at the time of the research, made it difficult for families who wished to hold the security forces accountable for their conduct in relation to the detention of those held under ‘suspicion’. Many of the protective stipulations that safeguarded the rights of Sri Lankan citizens in matters of arrest and detention for criminal conduct and other circumstances were suspended under these measures. This made it difficult for families to oppose or question the police without being seen as troublesome and antagonistic, as Dev Ayya and his nephew had experienced when they had questioned the police over their detention of Krishanthi. This could be construed as challenging the authority invested in the police and could lead to even more alarming consequences either for the detained person or for the family.

Although some precautionary measures are mandated on the police when acting under the PTA and ER, family members or those who are detained did not usually insist on due police procedures in relation to arrests and detention under cause of suspicion, for fear of offending the police. One requirement was about informing the family of the arrest and the other was to produce the suspect in front of a magistrate in a stipulated period of time prior to further detention. Police have a mixed record in their adherence to these regulations; but to date, no officers have been held legally accountable for failure of compliance (AHRC 1999, 2004b).

Dev Ayya's notion that there was no valid reason for the police detention of his niece – other than her being a Tamil from the North of the country – is reflected in his inability to ascertain from the police what exactly was wrong with his niece's identity card. The police did not at any point provide him with the reasons for their suspicion relying instead on the extremely vague phrases 'suspicion', 'from the North', 'security situation', etc. Any requests to be more precise in their explanations were disregarded. It would only be at the point of being formally charged that families would come to know the specific accusations. Being formally charged involved being issued with an indictment sheet which stated the specific charges which would be raised in court.

The indictment sheet was often prepared based on the statements of the detained, investigations and evidence provided by the police, and the testimonies of witnesses. Cases have been reported of the indictment sheet being issued in the Sinhalese language, in which case some Tamil families from the North had not been able to read the charges (see cases from Fernando 2009). In such cases, sometimes families had never come to know the reasons for the detention of their loved ones. Having a lawyer or other such representative was especially important in these circumstances – they would often guide the family through the process but would also be in a better position to demand from the police details about the reasons for detention and to insist that the police members adhere to stipulated practice.

Wigneswaran notes that a recent study had revealed as many as 300 detainees in one Colombo prison who had not been formally charged for over a year after having been detained under the PTA. In this context, Dev Ayya certainly benefited from having been able to engage the services of a lawyer, moreover one who had been personally recommended to him by the local council member.

Village jealousies and opportunistic violence in the climate of ‘suspicion’

The ‘security situation’ offered many such opportunities for those people who had an interest in creating problems for or denouncing others for various reasons. During my research period, one colleague contacted me in a state of great anger. Her Tamil neighbours had been searched by the police under charges of ‘suspicion’ and the husband detained for further questioning. He had been released two days later, but the incident had been immensely distressing for the Tamil family, she reported. But the source of her current anger was a conversation she had had with one of the Sinhalese neighbours in the area just that afternoon. The Sinhalese woman had confessed to being the one who had called the police regarding the Tamil neighbours. She had told the police of ‘suspicious activities’ in the Tamil household and had urged them to search the household. When asked to elaborate on the ‘suspicious activities’, her neighbour had told my colleague that the Tamil family “was so wealthy and we don’t even know how they have gotten their money.” What disturbed my colleague was the neighbour’s barely hidden glee at the difficulties and distress that she had caused the wealthy Tamil family by her actions – something which my colleague also contributed to jealousy and spite as much as a desire for social prominence and regard.

Dev Ayya alleged similar dynamics at work in his account of why the villagers had petitioned against his niece. It has been asserted that such vengeful and envious actions are commonplace in particularly tumultuous times (Kalyvas 2003, Kalyvas 2006, Wadugodupitiya 2010), as was the larger political situation at the time that I was conducting

the research. There is evidence however which suggests that such ‘opportunistic violence’ is not only confined to times of political unrest (Spencer 2007, Brass 1994). Geschiere (1977) rather suggests that intimacy – even at a village level – can bring about the ‘dark’ emotions of jealousy, anger, resentment, and envy.

The category of ‘suspicion’ afforded disgruntled villagers an easy opportunity to inflict some form of hardship for those families, but the potential for harm was greater in these cases. Such accusations could result in detention, as had happened to Dev Ayya’s niece, or sometimes in even more profound consequences. Even if angry or jealous villagers did not intend to cause harm beyond some form of disruption and harassment and accompanying emotional and economic difficulties to the family, interventions by the police sometimes had unexpected outcomes. In the next story I share, I look at one situation where indeed a grave ‘unexpected’ outcome resulted from an encounter with the police.

Ahmed recounts the story of Ismail and Dinesh

Ahmed is a 48-year-old Muslim labourer who lived in Periyannagar with his wife and two of his three grown-up children.⁵⁵ His daughter was married and lived in her husband’s house within the same camp. He had been lucky to have settled in the same camp as many of his relatives, he explained to the research assistant. The displacement had caused the loss of resources and connections; they had been a family of comfortable means before being displaced, but his extended family had been supportive and close to one another, which was a constant source of comfort. The particular incident that he wanted to share with the research assistant concerned his cousin, Ismail, and had happened recently, not quite six months prior to the interview. Ismail had been in need of a place to stay because his brother was getting married and an extension was being built to their small house, disrupting the usual living arrangements. Ahmed had invited his cousin to stay with them during this time.

⁵⁵ Interview 3.14.12

Ismail worked in a lorry that ran to and from Colombo and Mannar, both accompanying the cargo between these two areas and sometimes off-loading the goods on arrival. He was, Ahmed described, “a good man”, liked for his sincerity and cheerfulness, and much respected in the village for his steadfastness of character and ready disposition to help. He had a young family of three daughters, all under the age of ten, and a wife. Ismail’s friendly character, explained Ahmed, ‘attracted people’ and he had a wide circle of acquaintance and friends. About six months earlier, his cousin had invited a friend and colleague, Dinesh, to stay overnight in Ahmed’s house. This friend was not unknown to Ahmed, because Ismail and Dinesh had been friends, “good friends”, stressed Ahmed, for many years. Dinesh was Tamil. They behaved, in Ahmed’s opinion, ‘sincerely towards each other’ meaning that the relationship was a close one, with various civilities and familiarities extended to one another. Ismail had stayed on occasion with Dinesh’s family.

The night of their stay, the police had arrived suddenly, rounded up the occupants and had proceeded to arrest Dinesh. This had caused great anguish to Ismail and also to Ahmed’s family, especially as they had been witness to the harsh treatment to which he was subject. Ahmed had also strongly felt that his own hospitality had been compromised because the event had taken place on his premises and he had been neither able to intervene effectively nor stop either the arrest or the callousness with which their friend had been taken. Having known Dinesh for many years, Ahmed stated that they were convinced of his innocence. Despite their protestations and appeals to the police, the arrest had proceeded. Moreover, they had not been allowed to accompany him to the station. Instead they were asked to come the next day, after they had completed their investigations.

They had had a distressing and fretful night. Ismail had been especially upset, and had gone as early as he could the next morning to visit Dinesh at the police station. He was not allowed to see him, and was asked to return in the evening. He did as he was asked, in the

hopes of seeing his friend even for a short time. He wanted to know whether Dinesh was all right, and he wanted to get some information from him on whom to contact on his behalf. Although, Ismail had subsequently contacted the family of their friend (with whom he was on good terms), they lived in the North of the country and, given the security restrictions, could not easily travel to Puttalam to provide support for their son. Hence, Ismail had been the main person to continue appearing at the police station on behalf of Dinesh.

Over the next two days, Ahmed said that Ismail went several times with the hope of being allowed to see Dinesh, but without much success. He was either told to return at a later time or not to interfere in police matters. Despite these brush-offs, Ahmed reported that his cousin had been adamant to keep looking out for his friend and had gone several times to the station. The next time (i.e. the afternoon of the second day following the arrest) when Ismail went to the police station in search of his friend, he himself had been arrested. “When he didn’t come back from the police station that evening, we became very worried. Somebody told us that they had seen him at the station that afternoon so we knew he had reached there,” explained Ahmed. This had been the start of a more complicated situation for Ahmed’s family. Ahmed, and Ismail’s brother, had gone to the police in search of details about what had happened. The police had refused to give any details, including whether they had in fact arrested Ismail. Ahmed described the police as unfriendly and said that they did provide them with any information.

At this point, and in the context of what appeared to be the arrest of his own family member, Ahmed activated what connections he had had at hand. He contacted the mosque trust board leader and asked for his assistance in making inquiries at the police station. Ahmed explained that he and Ismail both knew the mosque leader a little bit, “not very much” but he was familiar with him as a village leader. Accompanied by the mosque leader, Ahmed had returned to the police station. In response to the mosque leader’s inquiry, the police

confirmed the arrests and informed them that the men had been taken to Colombo for further inquiries. On being asked why they, and particularly Ismail who was not Tamil, had been arrested, the police had only given the curt response of 'on suspicion'. The mosque leader was informed that the two men had been transferred to Colombo and were being held in the Colombo Police Headquarters for further investigation and that if they wanted additional information, they should enquire there. With this, the meeting with the police had concluded.

Once back in Periyannagar, Ahmed, Ismail's shocked and distressed wife, Ismail's brother and a few other members of his extended family, had arranged to travel to Colombo together. They had arrived early next morning at the police station, but on inquiry, were informed that there were no records of the men having been transferred to the police station at all. Ahmed and the family had gone to two other major police stations in Colombo with the hope that the men might be held there but to no avail. Ahmed stated that the family had returned to Periyannagar that evening in great agitation. They could not think of what to do next.

On returning from her visit to Colombo, Ismail's wife, Aleema, took matters into her own hands. Next morning she had gone early with her three young daughters to the mosque. There she had wept in front of the mosque leader and begged for his help, putting forward the children and describing their and her own predicament in the face of her husband's arrest. Confronted with the emotions of stark grief and a description of the consequences of such a loss to "innocent" children, the mosque leader felt compelled to promise his help, and in turn contacted the Minister for Resettlement. The Minister had travelled to Periyannagar, where Aleema met with both the Minister and the mosque leader. Subsequently, the Minister had made his inquiries at the station but later returned a report to the mosque leader that Ismail could not be located and they should wait for further information.

After she was told that the Minister could not locate her husband in any of the police stations in Puttalam or Colombo, Aleema and Ahmed had consulted a local non-governmental organization – the one which had directed us to the site. On their advice they had travelled back to Colombo, this time to the National Human Rights Commission. There, the wife had made a complaint of disappearance of her husband against the Puttalam police to a sympathetic and helpful officer. As Ahmed pointed out, not being a family member she could not make a similar complaint on behalf of Dinesh, but she did include him in her account of the disappearance. The Human Rights Commission officer promised to find out whatever information possible from the relevant police stations and to work towards the release of her husband. They promised to be in touch as soon as they had any knowledge of what had happened to the detained men. However, she has not heard from them for the last six months. She had visited the Commission twice since then. According to Ahmed, additional information had not been provided by the Human Rights Commission but many assurances of assistance continued to be firmly and kindly given.

While Ahmed implicated the police in the disappearance of his cousin, it was the involvement of the local people that he held as the main reason for the incident. He firmly believed that it was the “local people” from Kundruvillai who would have informed the matter of Dinesh’s stay to the police in the first place. He could not imagine a reason why anyone living in this camp should have done so. Both he and his cousin, he stated, were on good terms with all the people in the camp. They were neither rich nor powerful (so as to attract jealousy). On the other hand, he reasoned, the local people might have wanted to put the displaced Muslims into further trouble with the police. They would have neither cared who the Tamil person was nor who he had been visiting. The report would have merely served to discredit the resettlement community in the eyes of the police as an untrustworthy group of people. Ahmed believed this was what might have motivated some of the local

people to inform the police. And for this reason, he blamed that the incident had occurred at all on the malice of some of the local people.

I found it interesting that Ahmed (as did others in these stories) blamed the local people for the incident but did not highlight, as I had expected, that the police were primarily responsible for both Dinesh's and Ismail's disappearances. Reporting on 'suspicious' activities and about people was widely and actively encouraged as a matter of public duty during this period of time – there were public notices and media messages to the same effect and the police were also known to have held information sessions at community halls and local schools on the need for reporting and vigilance in the community. Reporting rates did increase, both from amongst concerned citizens as well as inevitably from those who used the situation opportunistically, as can be seen from these accounts. Whilst Ahmed clearly felt that the police were the instrument used to distress the displaced community, there was still the sense that he felt the ultimate responsibility for the event taking place at all lay with the 'local' people. Several scholars have noted how informers played a significant role in both the southern and northern conflicts of Sri Lanka.

Nonetheless, it was the suspicious category of person, the so-called 'traitor' to the nation, on whom the strongest feelings of resentment, anger and disdain from the public are laid (Thiraganama & Kelly 2009). They were despised even more so than the authorities who carried out the violence or the informers who betray their neighbours and friends. Even if the consequences to such informing were dire (as in torture or loss of life) there was little recorded sense of regret or remorse (see Wadugodapitiya 2010). A number of scholars has criticised the lack of compassion for or solidarity with those who suffer blaming media depictions (Cohen 2001, Kleinman 2000) to the effects of liberal capitalism (Hoggett 2006). Moreover, there was some hint of the effects of the just-world hypothesis put forward by Lerner which has been subsequently strengthened in different contexts and application –

where only those who are seen to suffer are thought to have done something which deserved it (see for example Lerner 1970, Lerner & Montada 1998). Such an approach tacitly accepts the possibility of violence from the police – even of an extreme type.

Ahmed wanted to reassure the research assistant that this was not an usual incident, especially in a Muslim village. “We see more arrests and disappearances these days, but these occur in the Tamil communities, not in ours. It is the security situation of the country that is causing this, and it is becoming a clear trend. I am now fed up with all efforts to find out what happened to Ismail. We have tried to find out the real information through the NGO, the Minister for Resettlement and also the Human Rights Commission. The only thing that is happening is problems piling up for his (Ismail’s) family – they are increasingly poor, Aleema can barely manage to work and to look after her three young daughters, and the children are not able to study because of their own distress. It is all hopeless. Only distress is what is remaining to us,” he concluded.

Guilt by ‘association’

Ismail was not in the usual category of suspicious people detained by the police – not being Tamil or from the North. However, I had come across a floating and vague concern about the dangers of ‘associating’ with Tamils or those ‘from the North’ even prior to my research for this study. The suggestion was that those who ‘associated’ with them too could fall under suspicion, could become ‘caught up in things’ or that ‘anything could happen’. Comments to this effect had always intrigued me during my time in Sri Lanka. They countered my initial sense of a bounded category of ‘suspicious’ person – that only certain kinds of people were seen as suspicious in relation to the prevailing political context, for example Tamils during the ethnic conflict or young undergraduate students during the earlier periods of JVP unrest. But it seemed that ‘suspicion’ could fall on those who were not in the suspicious category, and that one of the ways it could do so was through ‘association’.

For example, during the visit of a close Maldivian friend of mine to Sri Lanka, she met up with a group of her friends from Sri Lanka with whom she had done her secondary schooling many years ago. This being the run up to the conclusion of war in 2009, Haseeba was cautioned by one of her Sinhalese friends, Dilanthi about the time she spent with another (mutual) Tamil school-mate, Janani. In particular, she was warned to take care when going out with Janani, not to stay out late with her or if so, to organize separate transport. Dilanthi had told Haseeba that she herself was always careful to do so, citing the prevailing 'security situation' and the dangers of being stopped at a checkpoint with Janani. "If something happens, you might get caught up in it, too," she said to Haseeba. Haseeba however laughed off the advice, confiding in me that she felt quite safe as long as she carried her passport with her. Besides her friend was a doctor and was often not questioned by the police; in fact, as soon as they saw the sign of the doctor's red-cross on the windscreen of her friend's car, they waved the car through. Haseeba was convinced there was not much risk to herself because of her association with Janani, despite Dilanthi's warnings.

I was to recall this incident again when not much later another (Sinhalese) friend confided in me her worries that her young daughter was having too many close Tamil friends through work. She travelled too often with these friends in trishaws, especially in the evenings, and had on one occasion even stayed overnight at a Tamil colleague's place in an area in Colombo known for its night-time raids and police searches. My friend was quite concerned in case her daughter was 'caught up' in such an event and was convinced that the dangers of coming home (even late at night) would be the safer option. She was quick to assure me that she was not prejudiced against Tamils, but as she explained, "there are dangers in associating closely with them at this time. We have to be careful. Anything might happen."

The views of these people were not unusual. Many people seemed to have a heightened awareness of the general 'suspiciousness' with which people of Tamil background were

viewed in Sri Lanka at that time. They seemed to feel that caution was necessary about how they themselves could be viewed by the police for associating with Tamils or being encountered in their presence. Their cautionary attitudes suggested to me that it was not only those who belonged to a certain group or category of person who could be made to feel the effects of suspicion. Those who belonged to supposedly 'safe' groups, such as foreigners or the Sinhalese, i.e. those who did not belong to the specified 'suspect' categories, could have their own seemingly more 'innocent' positions compromised if they were found associating with members from a group of 'suspicious' persons. It was only at the completion of my fieldwork when I had collected a number of narratives which relate to themes of suspicion and association that it was possible to submit this phenomenon to a closer scrutiny. Ahmed's story represents a stark, if extreme, example of the way in which suspicion in relation to 'association with a Tamil' could unfold. At the time this study ended, I had heard from the non-governmental organisation which had facilitated the interviews that Ismail and Dinesh had still not been located. Their fate seemed similar to the numerous disappearances that were, and are still being, reported in Sri Lanka.

Moral claims and moral appeals in the failure of legal interventions

In Dev Ayya's story, he describes one point at which legal discourse had been abandoned by the mediators in their negotiation with the police. After the police determined to continue her detention following the villagers' petition, the GN and the local council member had switched to basing their appeal on moral grounds to secure Krishanthi's release. They had used the well-being of the pregnant Krishanthi, and that of her unborn child, in order to successfully persuade the police to release her from detention. Ismail's wife, Aleema, had also put forward the well-being of her three young daughters in galvanizing others to act on her behalf. She had appeared with her children at the meetings with the mosque trust board and with the Minister of Resettlement. She had highlighted their dependence on her

husband, and emphasised what the loss of their father would mean for the children and their future. Their ‘innocence’ was juxtaposed against the suffering they were expected to undergo, should the situation continue unresolved. In bringing these aspects to the attention of the mosque leader and subsequently the Minister, Aleema shifted the discourse to one of moral imperative.

Her response and action was not an uncommon one in the context of Sri Lanka’s troubled history. It has been argued that it was perhaps for this reason, i.e. their ability to shift the primary discourse in state and police violence to the moral, that women have led a number of forceful initiatives that challenged the effects of the ‘security situation’ in Sri Lanka. Utilizing the innocence of children, their own dependence on men and their status of motherhood, women were in a position to pose the situation in more moral, and less legal, terms. The argument then was not one of resisting or challenging state power (i.e. the legality of the arrest or the conduct of the police) but one in which the state could – even benevolently – alleviate the undeserved suffering of the ‘innocent’. Women’s more predominant role in this instance perhaps could be seen as a kind of tacit recognition of the way that this particular moral framing helps to sidestep the challenges brought about by framing the situation in squarely legal or political terms (de Alwis 1997, 1998; de Mel 2001; Argenti-Pillen 2007). Their appeals were simply to find the men who had been disappeared and to secure their release, once found. These appeals did not always go as far as to hold the state or officers responsible for their non-compliance with stipulated detention and arrest procedures. This particular shift to the moral appeal, in both the accounts outlined here, did not challenge the power or authority of the police; it was simply a moral appeal not to impose undeserved suffering on those who were dependent on the detainee (often ‘innocent’ babies or children). This reliance on the moral appeal and its gender dimensions deserve closer attention than I have been able to give it in my analysis.

While instigating some response, Aleema's moral appeal had not resulted in sustained action on the part of the two men she had appealed to. Neither the mosque trust board leader nor the Minister had persisted in their search for Ismail. They did not openly question the explanations provided by the police and did not inquire from the police as to what had happened to the two men in their custody. They had also not demanded any evidence of the detention or the transfer of Ismail and Dinesh, for example, in the form of copies of the police log. Perhaps the mosque leader and the Minister too were unwilling to antagonize the police. Their first impulse to respond to the moral appeal for help made by the detained man's wife might have also been checked by their burgeoning suspicion that to examine the detention at too close quarters might lead them into the cross-hairs of challenging state and police authority. It could also be that they found out that both men were dead and did not want to tell the truth to the family.

Police antagonism and opportunistic violence

The police had arrested Dinesh first; it was Ahmed's opinion that they had probably never intended to arrest Ismail. In trying to unravel the reasons why his cousin had been arrested, Ahmed provided the following set of explanations. Firstly, he was convinced that the main reason for his arrest was his cousin's persistence in following up on his Tamil friend. 'He was arrested because he had insisted on seeing his friend. He didn't give up. That is why they arrested him,' said Ahmed. This persistence would have irritated the police, according to Ahmed. In saying this, Ahmed shared Dev Ayya's idea that antagonising the police – through vociferous and sustained protest – was counterproductive and possibly dangerous. Dev Ayya had been careful that he did not persist, that he was not too vociferous in disagreeing with the police about the detention of his niece. On the other hand, Ahmed's cousin seemed to have persisted too much; he appears to have overstepped the limits of

acceptable persistence with the police (and, according to Ahmed, suffered the consequences).

The stories from both Ahmed and Dev Ayya suggested that to show impatience with police conduct could irritate and antagonize the police. They hinted at the possible dangers of acting in a defiant or disrespectful manner towards the police. Dev Ayya had been cognizant of this fact and had taken the precautionary measure of allowing the lawyer to conduct negotiations on his behalf. He had also, as he stated, refrained from being too aggressive. On the other hand, neither Ahmed nor his cousin had been able to engage a lawyer on their behalf. Ahmed's cousin had been, unlike Dev Ayya, unrestrained in his behaviour towards the police. Instead of acting in a way that placated the police, his cousin had disobeyed the police (by ignoring their instructions to wait) and had continued with his requests to see his friend without any of the social or legal back-up which Dev Ayya had had. Jani de Silva (2006) points to the traditional importance of deference and demeanour when talking with figures of authority, and how violation of such practices led to the spectacular violence in which 22 boys from one high school were tortured and killed at the local police station over several days.

In this case, once antagonised, the police has utilised the fact that Ismail had 'associated' with a Tamil and had been 'to the North' to make the charges of suspicion plausible. The gaps in the PTA and ER, where there need not be specific charges – for example, was Ismail collaborating with the militant groups? Or did his deliveries to the North and back contain something more than the usual cargo of vegetables and groceries? – made detention under charges of 'suspicion' a convenient tool for exercising their anger and frustration over Ismail's persistent behaviour. Without this convenient possibility at hand, Ahmed was adamant that it would have been difficult for the police not only to arrest him but also to subsequently maintain that he had been taken for investigation to Colombo and to require

that the family wait patiently. His 'association' with the Tamil person had placed him in a vulnerable position. The police officers were thus provided with an opportunity to act upon their anger, to retaliate or 'discipline' Ahmed's cousin's for his perceived affront, and to subsequently take refuge within the relatively safe framework of the 'security situation' and its associated instrument of 'suspicion'.

By acting on their anger at Ahmed's cousin's perceived insolence and seemingly 'disciplining' him for it, the police officers were behaving not unlike the angry and jealous villagers in Mahamalwatte who had made use of an available opportunity to get back at someone who irritated and antagonised them. It was not only the 'jealousies' and 'conflicts' between individuals or groups which could provoke the use of 'opportunistic violence'. Tensions and confrontations which occurred in encounters with institutional and bureaucratic authority could also become the scenes of 'opportunistic violence', as has been demonstrated in the previous chapter which describes numerous instances recorded in the accounts of police responding with violence to those who displease or disobey them. This exploration of the possible events takes us back to the initial concerns expressed by my cautious friends when they exclaimed that 'anything' or 'something' might happen if caught in a police encounter whilst associating with a suspect category of person such as the Tamils. In this sense, 'associating with Tamils' could indeed create certain vulnerability in the prevailing security situation. It was possible that 'anything could happen.' And it was made even more so, by the wide powers enjoyed by the police under the 'security situation' which could be used to in a sort of retaliatory attack which, nonetheless, has some veneer of legitimacy. Here lies one possible source of explanation for the generalized sort of anxiety suffered by those who advocate caution in associating with persons of a 'suspicious' category.

The laissez-faire approach to compliance with the regulations stipulated in the PTA and ER for arrests also facilitated the possibility of 'anything' happening during police detention and

custody. For example, ‘habeas corpus’ refers to the principle of presenting detained persons at a magistrate’s court within a stipulated period of time, with a view to ascertaining that the police did indeed have custody of a particular individual and to officially bring the person into the provinces of law. The magistrate was required to oversee the detention of the person in custody and vouch for his or her welfare, noting that they were unharmed. This provision did not always work spotlessly, as a number of shortcomings in the practice of ‘habeas corpus’ has been documented. Some legal articles have suggested that the provision that the police could produce suspects after-hours at magistrates’ homes rather than at offices, for example, has led to some problems (Fernando 2009).

According to information provided to me by two lawyers with whom I had individual interviews in the second stage of my research⁵⁶, magistrates have on occasion noted their own reluctance to have ‘suspected criminals and terrorists’ in their homes, and therefore have testified to having seen the suspect when technically he or she might have been in a police vehicle outside the premises and not actually sighted by the magistrate. In other cases, someone was certainly produced in front of the magistrate, but since the magistrate did not make any inquiries from the detainee independently or by checking relevant documentation, there has been difficulty determining whether in fact the detainee and the one produced before the magistrate were the same person. In addition, there have been several cases where lawyers have been reluctant to bring the matter to the notice of magistrates in fear of repercussions from the police. Especially in cases of physical assault and torture of the detainee, the failure of magistrates to carry out such checks to ensure police compliance with law has been condemned by some legal researchers and scholars. In some cases, magistrates simply refer the person for a medical examination by a Judicial Medical Officer, whilst still being held in police custody, and they do not always question the suspect/victim on their treatment by the police even when there is evidence of serious injuries.

⁵⁶ Interview 2:6 & Interview 2:9

It was certainly worrisome that there was nobody, not even a magistrate, who had seen either Ismail or Dinesh after they had been detained. There was no one who could legally and independently ascertain the facts of their detention or of their well-being. Their lack of access to skilled legal assistance also meant that neither Ahmed nor his cousin was aware of these provisions within the law, and could not negotiate with the police in quite the same way that Dev Ayya had been able to because of the lawyer he had engaged. Not all families whose members were detained under suspicion could afford the services of a lawyer. Dev Ayya had been able to afford the services of a lawyer for the duration of his niece's case, but Ahmed and Ismail had not been in a position to afford legal advice. This difference reflected the differences in their social and economic status and was a good indication why there is a general public sentiment that justice was not for the poor. In Ahmed's opinion, the only safety for Ismail in this situation would have been if he had "given up" on visiting his friend and instead followed police instructions "to wait till investigations were concluded". By not doing so, Ahmed explained, he could be seen as "asking for it." This phrase was something which I had encountered on a number of occasions, both during the research and afterwards, and it is explored in greater detail in the following section.

Risks of provoking police antagonism

As could be seen from both Ahmed's and Dev Ayya's stories, the refusal to acquiesce to the demands and decisions of the police and other figures of authority had the potential of incurring a violent retaliatory response. Just as in the case of the family who were separated from the protection of the mosque trust board, defying the police could result in the disciplining and punishment of transgressors. Because of the broader repertoire of responses available to the police, the retaliation could take the form of intimidation, harassment, assault, detention, and as has been recorded, even death. By stating that Ismail had been 'asking for it', Ahmed referred to Ismail's transgressive acts of persisting in his quest to see

his friend, despite repeated warnings by the police to wait till the investigations were concluded. The term was used to describe situations where people suffer the expected retaliation for acting in transgressive ways which challenge authority. This phrase was one which I became subsequently very familiar with, especially in the second set of interviews I conducted with the group of activists, including lawyers and various human rights advocates, and particularly so in relation to one high-profile incident of murder that took place the same year as my field-work.

Lasantha Wickrematunga was the chief Editor of one of the most prominent Sunday newspapers in Sri Lanka, whose investigative journalistic pieces often focused on evidence of corruption and underhanded deals within the government. He had been the recipient of several warnings and death threats, and was subsequently killed in a highly controversial attack on the road to his house. The murder was attributed to antagonistic forces within the government. His murder was seen as a reaction to his continued provocation of powerful figures within the government. A number of people assumed that his detailed depictions of corruption and underhanded deals had finally hit a nerve, and his refusal to acquiesce to the demand to stop his activities had evoked retaliatory action. Because the second set of interviews I carried out was subsequent to this event, many of them made reference to his death, shared their distress and experience of mourning, and also provided some of their own understandings of why and by whom he was killed. A recurrent theme through these different discussions was that of ‘asking for it’.

One of the legal reforms activists whom I interviewed⁵⁷ described his reaction to the death as one of equal measures of deep outrage and sorrow, and of renewed commitment to his own work. His work was a source of deep satisfaction for him because he found himself helping people who were victims of various types of discrimination and deprivation, people that

⁵⁷ Interview 2:16

were, in his words, ‘wronged’. Many of the people he worked with fell into the category of ‘suspicious’ persons, and he dealt with a number of cases of illegal detention and disappearances. He acknowledged that there had always been strong stresses and pressures associated with such work. For example, he had been subjected to intimidation and harassment by some groups for quite a number of years. However since Lasantha’s death, there had been negative reactions from an additional quarter which he had not expected and with which he was still, at the time of my interview with him, struggling to come to terms. Some of his close relatives and friends had begun to criticize and devalue his work, asking him why he persisted in it. They referred to the dangers of continuing such type of work, citing as an example, Lasantha’s death. But instead of seeing Lasantha as someone whose integrity and ‘courage to expose wrongdoing’ by key figures in the government had resulted in his assassination, they had described his constant provocations of the government as ‘asking for it’. This activist stated that for many of his relatives, Lasantha’s death was the inevitable result of his own “foolish” persistence.

The relatives and friends of this one activist were not alone in describing Lasantha as having been ‘asking for it’. Others whom I interviewed during this time also made reference to this prevalent opinion surrounding Lasantha’s death and how it grieved and angered them. Their anger and distress arose from the way in which this particular view that Lasantha’s transgressive actions against corrupt figures of authority inevitably resulted in his death. There was an acceptance that those who had been antagonized had simply used whatever means they had at their disposal to retaliate against his continued defiance. Activists railed against the view that retaliations for transgressions against institutional or political authority were seen as an inevitable consequence. Those who were ‘foolish’, ‘irresponsible’ or ‘un-cautious’ enough to engage in such behaviour and who then suffered these inevitable consequences had simply been ‘asking for it’, they explained.

While most expressed unequivocal anger about this point of view, I could see that some were ambivalent about their own position. They themselves appeared to wonder sometimes whether Lasantha Wickrematunga had gone too far, whether he should not have restrained himself in the face of mounting danger. At times, they too seemed to accept the inevitability of his death. In the face of such extreme consequences, many people wondered why people might choose to persist in transgressive behaviour, whether this was not, as in the words of the well-meaning relatives of the legal reform activist, quite a 'foolish' thing to do. This belittling of the work of solidarity with victims is one tool that perpetrators utilise to ensure their dominant status quo; it helps to keep the victim isolated and it also tends to constrain people who side with the victim (Herman 1997). When this stance gets integrated into the everyday consciousness of even ordinary people who then 'avert their gaze' from the victims, then perpetrators are allowed to get away with much more atrocity as their power increases (Scheper-Hughes 1992, Kleinman 2000).

Many of these activists were very aware of the dangers of their own work; they were aware of being watched and of being under surveillance by those who were displeased with their work. Yet they explained that their work was of great importance to them, and constituted a form of solidarity with citizens in their country who faced inexcusable discrimination and danger. They were also cognizant of the material, legal and emotional costs to these families and individuals were they to 'give up' these connections. In the face of continued pressure from family and friends to withdraw from these 'associations', and even in the face of personal disadvantages and danger, they could see the value in maintaining these relationships and were unwilling to acquiesce to the commands and recommendations that they give these up.

There was a similar emotional and moral dimension in Ismail's refusal to give up his long-time friendship with his Tamil friend, and his continued commitment to search for his friend

leading up to his own disappearance could also be placed in the same line of solidarity showed by the activists mentioned earlier. Ismail's bond of friendship with Dinesh required him to continue working on his behalf, and as Ahmed explained, 'he could not give up his friend'. This brings us to the dangers of solidarity in one's associations and friendships against the authorities in power. Such acts of solidarity and friendship placed Ismail (and some of the other activists whom I interview) in a situation of challenging those in authority and questioning their competence, authority and conduct. Whether their actions and decisions ought to be seen as heroic or foolish, none were willing to consider the alternative – that of 'giving up' their friendships and bonds with people when instructed to do so, by people in positions of authority. Indeed, there are other reports of the police becoming violent in the face of challenges to their authority on the basis of filiaty, friendship or social solidarity. Fernando (2009) notes several such incidents, where one Milroy was assaulted who went to see his friend Chaminda (292), Erandika Bulathsinghela who was arrested and assaulted for over 30 minutes (resulting in bleeding from the eyes, mouth and ears, a cracked jaw, and impairment in hearing) for requesting a man (who turned out to be inspector of police) to desist from assaulting a young boy (537), Ravindra Wanniarachhi who was assaulted for defending two customers who were being assaulted by two police officers in his hotel premises (when Ravindra tripped and fell, blacking out and was being taken to hospital, the police followed the vehicle to his home and tried to stop him from being taken to hospital), and Elmo de Silva who was arrested, assaulted, forcibly made to sign a document and then falsely charged, for asking the police officer to stop using foul language to his wife and her cousin, when they went to see her uncle who was in custody (299).

However, as the next story demonstrates, it is not only the act of associating with, or acting on behalf of, those belonging to the categories of suspicion which could result in danger and discrimination. Because the categories of suspicion were determined by socio-political dimensions, these categories were not stable entities; changes in socio-political

circumstances changed who were seen as ‘suspicious’. More problematically, any person who fell into a category which the police and state authorities could not determine or was anomalous was also possibly at risk.

Dayananda describes the dilemma of his daughters

Dayananda was the father of four children, and was 60 years old.⁵⁸ He owned a vegetable shop, selling the produce that he and his wife grew themselves. His wife’s native village, he explained, was Mahamalwatte itself. He himself was born and brought up in Killinochchi – a town in the Northern province that subsequently became prominent as the capital city of LTTE-ruled territory, but had lived in his wife’s village after their marriage. When his eldest sister had married, he and his wife had decided to move back to his birth-place and to live with his family. This was in the 1960s, and they had lived there for 14 years when the troubles in the North had started. In the 1980s, amidst the violence, they had thought it best to move back to Mahamalwatte, after which they had continued to live in that village up to the time of the interview.

By the time they returned to Mahamalwatte, they had two young girls, both of whom had been born in Killinochchi. This, he declared, was the source of their biggest problem. The identity cards of his two young daughters stated their place of birth as Killinochchi. In the current security context, this was a source of great worry, he explained. In their childhood, they were mostly in the village, but as young people in search of jobs and eventual mobility, they travelled frequently. Even if Dayananda and his wife accompanied the two daughters when travelling, there were feelings of anxiety and worry whenever they stopped at a checkpoint. On a number of occasions, the police had become suspicious when they examined the identity cards of the two daughters, taken them in for questioning, and Dayananda or his wife had had to intervene and make explanations to the police, many of

⁵⁸ Interview 3.38.2

whom knew few Sinhalese 'from the North'. More recently however their concern had increased. The escalating war – and the circulating allegations of Sinhalese 'traitors' who helped the militant Tamils – meant the consequences of becoming 'suspicious' to the police were growing more dangerous for the Sinhalese as well. Even the Sinhalese were scrutinised more carefully at some of the checkpoints, and especially those who were seen to be in some ways 'associated' with 'the North'.

This escalation of their worry was combined with the pressing need of finding employment for their daughters. His daughters could not travel safely for job interviews and were they to find work outside of Mahamalwatte, their journey everyday would be a source of great stress to their parents. As a consequence, Dayananda had applied to the GN and requested his assistance in seeking a police report for each of his daughters that explained their background. The GN however had declined to write the letter, but had agreed to certify the application on their behalf.

Subsequently, Dayananda had written the letter and submitted it to the police station, along with the certification of the GN. There were no problems at the police station and in fact they showed much understanding and sympathy to the family. As Dayananda explained to us, "being Sinhalese we did not have any problem with the police in getting the police report." In fact, the policemen had tried to explain to them that they had nothing to fear as they were an innocent family. But they were also hard-pressed to explain why the daughters had been questioned more vigorously and frequently at police checkpoints in recent times. "Whatever they said," said Dayananda "we are worried that they had to use these identity cards which stated their birth-place to be Killinochchi." Having the police reports was a source of comfort and reassurance. His wife and he were still uneasy when their daughters travelled, but their anxiety had lessened.

Dayananda believed that the police report was only a partial solution. For one thing, he was convinced that their birth-place (shown on their identity cards and stated in the application forms) played a role in preventing his daughters securing jobs. He stated that they had been overlooked on several occasions, and he suspected this was because of people's unease and anxiety about their having been born in the North. Not even politicians were willing to help them once they knew his children were from Killinochchi, explained Dayananda. He was now seeking for a way to change their identity cards to state their place of birth as his wife's village, but this was not a simple task and he was not sure how to go about this. Towards the end of this conversation, Dayananda exclaimed in a tone of complete exasperation, "Is it wrong for our daughters' birth-place to be Killinochchi? Their being born in Killinochchi has spoiled my daughters' futures!"

Indeed up until the 1980s, a small proportion of Sinhalese, even perhaps less than 1% of the population, lived in the Northern Province. Some of them had intermarried into the community, several ran businesses. There was a Sinhala Department at the University of Jaffna prior to 1983 and several Sinhalese academics were noted amongst the faculty. Many of these Sinhalese were long-term and integrated residents who considered the north their home. In 1983, following the anti-Tamil riots in Colombo and the south of Sri Lanka, many of these Sinhalese families fled the area due to increased hostility and threats from the paramilitary groups, most notably the LTTE. However, given their small numbers and the many years in which the north was regarded and represented as being exclusively Tamil, it is perhaps not surprising that for the contemporary police officer or government official, a Sinhalese from Killinochchi is an anomaly and as such is treated differently, suspiciously.

Changing categories of suspicion

In the run-up to the military conclusion of the war, several allegations were made about new groups of people who were seen as suspicious or as acting against state sovereignty. For

example, there had been major splits of opinion amongst the Sinhalese over the appropriateness and suitability of some of the more stringent strategies employed by the state in fighting the militant Tamils. Some had openly opposed the escalation of war, and particularly the strategies that were said to be unnecessarily risking the lives of both soldiers and civilians. Those in opposition to the war or who questioned the tactics of the government were publicly criticised and shamed, and their patriotic sympathies questioned. They were referred to as traitors, and terrorist sympathisers, and there were calls for their death by some overly zealous elements. Similarly, some Sinhalese were also accused of being on the payroll of militant Tamils or of hostile foreign elements. This was the reason, it was alleged, for their voicing such opposition to the war or more problematically assisting in the covert operations of the LTTE. For these reasons, not surprisingly, many Sinhalese found themselves at the receiving end of closer inspection and surveillance from the police than they had been used to, up to that point. International NGOs as well as many local ones, including the staff members, found themselves listed as potentially suspicious groups of people who had to be brought under closer state scrutiny.

During the course of that year, surveillance in general increased all over the island. There were door-to-door searches of different neighbourhoods in the Colombo district, and in the research sites, there was the establishment of new police-community committees, whose main task was to report to the police any 'suspicious activities'. Frequent meetings at community halls and on school premises exhorted the public to be more vigilant, and to report those whom they suspected of engaging in 'suspicious activities'. People were encouraged to report those who stayed overnight at their neighbours' houses, and in general to oversee the activities of their neighbours and friends. Posters were put up in different parts of the country asking people to anonymously report those who they deemed 'suspicious'. At the same time, the police stepped up their scrutiny of those who passed their

checkpoints and others who they came into contact with, in the course of carrying out their responsibilities and duties.

It was not surprising then, in such a climate, that Dayananda's two daughters began to be more closely questioned to their backgrounds at checkpoints and for others to look askance at them for being Sinhalese 'from the North'. Furthermore, many of the younger policemen had never heard of nor met any northern-born Sinhalese and were therefore quite unconvinced that such a category of person existed. Their encounter with Dayananda was mostly one of initial surprise and doubt, and it often required some long explanations before they seemed convinced of his story. No wonder then, that he and his wife grew more anxious for the safety of their daughters over the course of the year.

However, many of the activists whom I interviewed remembered other times when being Tamil or from the North were not the main causes of suspicion. During those times, the category of those deemed suspicious was quite different. They cited other groups who had been at the receiving end of the state's suspicion in the past – most notably, the university students or graduates of Sinhalese rural background during the years of the JVP insurgency. In more recent years, non-governmental workers widely accused by the state of collaborating with foreign donors to weaken the sovereignty of the state and strengthen the hand of the LTTE had also become objects of scrutiny, surveillance and suspicion.

These developments reflected two key issues: firstly, that the socio-political category of suspicion was in flux because those deemed to oppose the state were constantly changing, depending on the socio-political circumstances; and secondly, the inevitable dangers of suspicion being linked to whole categories of persons, regardless of their individual intentions or actions. As these categories changed, new groups of people were vulnerable to charges of suspicion, and the subsequent dangers outlined above in relation to such charges. Douzinas (2000) argues that the constant making, remaking and unmaking of legal

categories by the state undermines the way the political and legal institutions work in a country, and indeed this seems to be the case here.

Changing one's identity to avoid belonging to a 'suspicious' category

Faced with such dangers, Dayananda was not alone in seeking to change the information that linked someone to a category of suspicious person. Just like Gayathri, who over the years hid aspects of her northern Tamil identity, as she assimilated into her Muslim family, Dayananda too sought to hide the fact that his daughters were born in the north of the country in order to protect them from discrimination and danger. This was also not without its dangers – the accounts showed accusations of forged birth certificates and identity cards had been a source of trouble for many Sinhalese and Tamils alike and indeed had been the – allegedly unwarranted – accusation made against Dev Ayya's niece in her detention. Indeed, as Roberts (1994) points out, state discourse that limits the criteria for legitimate Sri Lankan citizens cause greater anxiety amongst the polity and it also allows others to integrate such exclusionist language into their own everyday interactions.

The desire to change one's identity to one that was more in conformity to those categories accepted by the state is a powerful one. Sunimali, a young Sinhalese woman who had married a Tamil in Podimalwatte, described to one research assistant how she had persuaded the GN to issue a birth certificate for her new-born son with a Sinhalese rather than Tamil surname.⁵⁹ He had agreed with her that this would be safer for the child and complied with her request. She had also persuaded her husband's family that her son should be fluent in Sinhalese. Sunimali explained to the research assistant that these were measures she had undertaken to ensure that her son would not have to face the dangers or the discrimination that her husband – as someone who belonged to one of the prevailing categories of suspicion – did. Her actions – and Dayananda's desires – to hide and erase those aspects of the

⁵⁹ Interview 2.22.1

identities of their loved ones which linked them to the state-defined categories of suspicion also raises some other issues. It describes how individuals and groups found ways to try and circumvent the suspicion directed towards themselves or the ones they loved, and in the process created legal persons who were more in conformity with the narrow categories identified and accepted by the state.

Such re-inventions of one-self were problematic for two reasons; firstly, because these categories of suspicion were in flux, depending on who the state declared to be its enemies, and secondly, because it hid the actual existing complexities and ambiguities of identity and being that were being overlooked by the simple categories of persons enacted by the state. Those who do not conform to these simple categories – such as the northern-born Sinhalese – become oddities rather than reflections of a more complex reality.

Conclusion

Being ‘suspicious’ relates to the conflict that was going on at the time of the research and was used to indicate those who may be associated with the secessionist militants against whom the government was fighting. From January 2008 till the end of the war in May 2009, military campaigns targeted at overtaking the Northern Province cost many civilian, military and militant lives, property and caused large-scale displacements. At the same time, the militants responded with sporadic bomb attacks in public places, and guerrilla attacks on air and navy bases. There was also talk of cadres fleeing the area into southern non-conflict zones in order to stage these attacks as well as to escape the war. Consequently, the government stepped up efforts to surveil communities and encouraged active reporting of those whom people saw as ‘suspicious’. This chapter illustrates how suspicion and the charges of ‘being suspicious’ were a prominent, if not immediately discernible, part of the village atmosphere and of daily interactions between people in the research sites.

The ongoing war against the Tamil militants, taking place in the northern parts of the country, meant that 'being from the North' was one of the categories of suspicion. Similarly, anybody who indicated any criticism of the government and their high-cost military campaigns were also labelled as an LTTE sympathiser or supporter and treated as suspect. Belonging to, or being labelled, a 'suspicious' character came with heightened vulnerability, including the possibility of detention, harassment and intimidation by the authorities.

This state of additional vulnerability could be utilised by other people for various motives, ranging from jealousy to strategic opportunity, by reporting the person or family to the police without any clear basis. Making such allegations was likely to cause further harm to a family who belonged to a category of suspicion, even if it was at the level of disruption and difficulty. In more serious cases, the consequences included abduction, torture or disappearance in detention (as in Dinesh and Ismail's case above). People experienced great anxiety about the possibility of becoming suspect or of an encounter with authorities if they already belonged to such a category. Moreover, others worried about the way one could become suspect oneself if associating with people who belonged to suspicious categories.

What was also evident was that these categories of suspicion are not stable but in flux, determined by the state in relation to prevailing political agendas and context. Any credible challenge to the state (or its authorities) could be – and have been as shown by some of these accounts – construed as a threat, and therefore as 'asking for it [trouble]'.

In these cases, the seemingly most safest course of action was not to resist or challenge the power of the state but to provide some opportunity by which the state could benevolently grant safety or protection – for example, a moral stance that allows the state to alleviate the undeserved suffering of the 'innocent'. This also means that rights and entitlements (even those stated in the law) are granted by the state at its whim, if there is cause to believe that the challenging or threatening person is innocent or now rendered harmless. Because of the

possible dangers of belonging to suspicious categories and of being seen as a threat or challenge to the state, there is considerable concern and effort on how to show evidence of ‘innocence’ or of belonging to a ‘safe’ category. This dynamic, of how to become known to those in authority is the subject of analysis in the next chapter.

Chapter 7 Connections, Protection and Power

In this chapter I focus on the importance of ‘connections’ for those under suspicion and also for those in positions of authority such as the police or the GN who were required to make decisions about those in custody or requiring services. Through analysis of general trends and specific revealing cases, I attempt to unpack why and how ‘connections’ become an integral element of seeking and obtaining justice in Sri Lanka, especially in context of heightened security concerns. I look at the underlying factors that determine what comprises ‘connectedness’ and how it contributes to socially situating individuals into the important categories of ‘known’ and ‘unknown’ persons. I also look at the interplay of social, economic, ethnic and political factors that come in to play in determining who is ‘known’ and therefore safe, versus who is ‘unknown’ and therefore suspicious. In trying to explain the way in which ‘connections’ work in affording protection, providing validation and credibility and in underpinning and sustaining power structure, I also look at the role of ‘connections’ in the state-society interface: what motivates ‘known’ persons to intervene and/or offer support in crisis situations and what motivates authority figures to look for ‘connections’ and rely on these ‘known’ persons in making decisions in the justice process.

The Importance of Connections

When confronted with the detention of their family members at the police station, both Dev Ayya and Ahmed had hurried to contact people in their social settings whose interventions they felt would be important for the release of the detained persons. Dev Ayya had contacted the local council member, the GN of the village and members of the village awareness committee about the detention of his niece. Ahmed had contacted the mosque leader on behalf of his detained cousin, Ismail. In Dev Ayya’s story, the people whom he had contacted had rallied around him in support, adding their voices to his in exhorting the

GN to act on his behalf. The GN in turn had phoned the police station, and later on had made personal representations together with the local council member for the release of Dev Ayya's detained niece. The local council member had contacted his political acquaintances for assistance and had also recommended a lawyer whom he knew to be experienced and helpful. In Ahmed's story, the mosque leader had accompanied Ahmed to the police station to make inquiries about Ismail, and had also contacted the Minister for Resettlement later on in response to pleas from Ismail's distressed wife. Admittedly, the kinds of interventions that the mosque leader carried out were less intense than the urgent appeals and actions undertaken by the local council member and the GN in Dev Ayya's time of need. Nonetheless, both stories revealed a heavy reliance on contacts as a primary means of dealing with the detention of their family members. This response of contacting a 'known' person to intervene and assist the individual or the family in situations of crisis and need – especially at the point where individuals come in contact with the formal justice system i.e. most frequently with the police - is one of the most evident features of the stories collected from the interviews.

'Catching hold' of a 'known' person

In all noted cases of detention by the police (and there were twenty-five in all from the three sites), the first course of action by family members and friends had been to contact a 'known' person. This was true whether the detention was in relation to suspicion under terrorism or due to allegations of serious or petty crimes. Once contacted by the family, and if they were willing to intervene in the case, these (almost always male) interveners would make representations to the police on behalf of the detained person, stressing their positive opinion or knowledge about them, and their family. Their focus was on explaining to the police why suspicion of the detained person was unfounded and ended with a request that the person in custody be released.

This process was referred to as going through a ‘known person’ (*andurana kenek* or *thanna kenek*), and the stories in this study suggested that it was utilized in many different arenas of Sri Lankan society. ‘Going through a known person’ was important when accessing almost all state services whether in the area of health, social security, public utilities and other agencies, and in other non-detention related cases when dealing with the police, as in obtaining a police report, making a complaint or requesting other assistance. In fact, I have myself also often been asked by friends or colleagues “do you know someone in this office?” when people hoped to find some assistance with a task at hand. ‘Known people’ facilitated access by making personal introductions or recommendations, accompanying the person to the office, helping people to by-pass queues and waiting lists, and obtaining approvals. In some instances, they hurried along administrative procedures, for example by ensuring that a submitted application or file was processed more rapidly, or by tracking and encouraging its progress from one internal department to another within an office. Availing these connections became even more urgent (as the consequences were more dire) in the cases of dispute resolution, especially when it consisted of coming in to the realm of the formal justice system.

Finding a ‘known’ person involved considerable effort. These efforts were described in great detail throughout the interviews. They were a cause of self-satisfaction if one already possessed good enough connections, or a cause for relief and quiet celebration when successfully established. It involved searching through one’s own networks and if not successful, then finding someone who ‘knows’ someone who ‘knows’ someone and so on. The ‘known’ person should be willing to help and intervene in a supportive manner. The process of finding a ‘known’ person whose support was needed was described to me as “catching hold” [*allaganava*] of someone. In the event of failing to catch hold of someone who was reputed enough in the community, any fairly powerful person known to the local police station seemed to be sufficient.

One woman from Rakmulla laughingly told me, “even if he is a thug, if he is known to the police, we try to catch hold of him before we go to the police station.”⁶⁰ She referred to the fact that her nephew occasionally used drugs and therefore knew some of the well-off drug dealers in the vicinity. Once, when they had had to go to the police station on account of being robbed, they had sought the company of one of these dealers prior to making a complaint at the police station. The police officers, she alleged, were on good terms with the drug dealer and therefore they had chosen to go with this ‘known’ person rather than alone. She was not alone in referring to local, well-known and well-established criminals as sometimes serving an important and useful connection. Although clearly not the most favoured or preferred connection, ‘thugs’ were described as being capable of using and showing power to get things done (or in some cases, undone, i.e. to remove evidence or get a police entry withdrawn), as was seen in the previous chapter.

Generally, however, people who belonged to the category of effective ‘known’ persons, included ‘educated people’, ‘professional people such as teachers, doctors and nurses’, ‘religious leaders’, ‘persons with good qualities, i.e. a person known for good moral conduct’, ‘local or national politicians’, ‘state officials such as GNs, local council members’, and the police. These descriptions spontaneously provided by the informants about the types of people who they saw as powerful ‘connections’ resonated with data obtained in this research; mediators, on the whole, tended to fall into these categories.

In contrast, ‘unknown people’ did not fare very well in official settings. They reported being scolded and humiliated, their applications being neglected, having to repeatedly request for services, being pushed to the back of the queue in order to accommodate those whose requests were prioritised, or being subjected to exorbitant bribes or other favours. (Also see Attanayake 2007). An informant from Rakmulla stated, “going to the government officials

⁶⁰ Interview 1.39.4

here turns my blood to water. They do not usually care to see us. If we knew someone or we were powerful, they would help us.”⁶¹ The repeated futile visits of Ahmed’s cousin, Ismail, and later of Ahmed himself, in trying to obtain information from the police about the detained men underlined the difficulties faced by the ‘unknown’ person. Perhaps it was this prospect of humiliation and mistreatment that made many informants reluctant to seek the services of the police or other officials without the reassuring support of a ‘known person’.

Sudhaharan, a middle-aged father from Mahamalwatte explained how he had dealt with a recent situation when his son had been detained at a police station in Colombo.⁶² His detention had taken place following a search operation in the area he had been staying in whilst on a business errand for his father. Search operations were conducted regularly at the time because it was during the run up to the SAARC Summit, hosted in the capital city that year. Sudhaharan had received news of his son’s detention the very next day. The police, whilst not overly suspicious of his documents, nonetheless wanted confirmation of who he was. The police in Colombo requested that Sudhaharan ask the local police station to reconfirm his son’s details. Sudhaharan was, however, reluctant to go alone to the station, and he contacted a friend of his, a local politician whom he described as being on good terms with the police. Sudhaharan had to wait one week until his politician friend was free to accompany him to the local police station to make this request. He described this week as “very painful. I was so worried, I could not eat, I could not work. He is my only son. But there was no use to go [to the police station], without my friend.” He stated that he was quite pleased with the result because his son had been released several days earlier than the other young men who had been detained in the same search operation. He attributed this to his strategic efforts, his link with the politician, and his ability to endure without allowing his worry to overwhelm his patience.

⁶¹ Interview 1.23.2

⁶² Interview 2.39.8

Limitations in creating necessary social connections: making of the ‘unknown’ person’

Ahmed’s story, shared in the previous chapter, also highlighted the predicament of families who did not have many ‘connections’. The window of opportunity which usually existed following a detention had not been made use of in the case of Dinesh, Ahmed’s cousin’s Tamil friend who had been the first man to be detained in the story. Apart from having being unable to come to Puttalam themselves, Dinesh’s family had also lacked any connections that could have helpfully reached out to those with either social or political significance in the Puttalam area. Such a connection, had it existed, might have more effectively prevailed upon those in authority, in ascertaining Dinesh’s innocence and successfully appealing to the police to let him go. Why was it that this family lacked any social connections of significance? The most glaringly obvious reason was that they were themselves not from the area. They might have been more effective had the arrest and detention taken place on their turf, amidst a place where they had networks and connections. Perhaps this was why many people in Sri Lanka seemed to me anxious about travelling in a troubled political climate; if trouble occurred far from home, it was even more difficult, if not impossible, to mobilize the necessary support to intervene and reverse the proceedings.

Lacking the necessary ‘connections’ that could traverse the geographical distance to Puttalam, his family instead had been forced to rely exclusively on Ismail’s (ineffective) lobbying on behalf of their son. Ismail, a young lorry-driver from Periyannagar, had not attempted to mobilise any other key figures in his intervention; he had repeatedly gone to the police himself. Once he was arrested, Ismail’s cousin, Ahmed too had not involved any person apart from the mosque leader, the main person to be officially contacted in such a situation anyway. As Ahmed explained, he did not know the mosque leader personally, only because he was the village leader. Given that they relied almost exclusively on the formal

support available, it seemed that neither Ahmed's nor Ismail's family were linked to any person of considerable power or repute in the area.

The impoverished status of Ahmed's and Ismail's connections might also be conceivably understood in the context of their impoverished circumstances in general. Building connections required a certain amount of time, exchange and reciprocation which were unavailable to families of economically poor backgrounds or in difficult circumstances. These acts of exchange and reciprocation could take many forms. Richer families offered economic or material resources, e.g., money or goods to community events, enhancing their status in the village; poorer families often volunteered labour to these community events. Both these forms were seen as legitimately participating in village events and activities. In any case, a disposition to help in either form was appreciated by village leaders and other key community figures. Such participation tended to promote one's social status and recognition in the village setting, and one was also more likely to achieve the desirable quality of becoming 'known' to others. These efforts are recognised in both Bourdieu's (1977) and Putnam's (2000) concepts of 'social capital' – a term they use to capture the network of friends and acquaintances which one can call upon for assistance or support, in other words one's social resources. However, the particular dynamics in these accounts resonate better with Bourdieu's more nuanced version of social capital, where he recognises that social capital acts in the same way as other forms of capital – those who have it are more likely to generate more, thereby reproducing the existing status quo (Svendsen 2006).

For instance, poor families in difficult situations (e.g. those with very young, disabled or elderly dependents) or in types of work that took them regularly out of the village were not in a position to offer such resources or even their labour in order to build their social networks, I had discovered whilst engaged in a research on psychosocial impacts of poverty earlier (see Salih & Galappatti 2006). They had to work every day to earn a daily wage and

adult members in families often simply did not have the time to offer their voluntary labour. Thus, not only did they lose out on opportunities to become sufficiently 'known' to key figures but their lack of participation in community activities also caused resentment and the rise of uncharitable feelings within the village towards these particular families, further entrenching them in their positions of vulnerability and disadvantage. They were sometimes offered help if they were seen as being 'innocent' and suffering (e.g. children of alcoholic men) or if they worked for the mudalali, he may offer some temporary help in a situation of crisis.

Perhaps it was for this reason that the luxury of time to participate in village activities was highly appreciated and identified as an invaluable resource in building useful networks (PADHI 2008). As a frequent traveller in relation to his job and as a worker in a lorry supporting his young family of three, Ismail would not have had the time or the means to devote to building stronger social relations with others in the community in the conventional manner. Despite his cheerful disposition and helpful character, this drawback seemed to have limited his ability to mobilize concern or intervention on behalf of his detained friend or even for his own sake, as we were to find out.

Barbara Arneil (2006) focuses on the quality of social networks and argues that this is necessary to serve the interests of those in need. Her arguments are in accordance with what is observed in these accounts: those with stronger social networks, i.e. those whose social networks transcended their social groups and linked to others in positions of comparatively greater power and authority, were at a discernible advantage. It is precisely this ability to leverage one's network and to amplify one's voice through this mechanism in requesting or demanding assistance which imbues it with a distinctly political dimension.

However, it was not only some situations of poverty that tended to limit people's networks. Elements of class and education also had some impact. For instance, one of the women

activists whom I interviewed shared her own story of being detained by the police in Colombo and then released through her parents' interventions⁶³. She had just moved from the North to take up a job in Colombo, when she was detained one night on her way back from work. To negotiate her release, her family had contacted a well-respected Sinhalese man, a school-principal, to arrive at the police station on behalf of their daughter. How had her parents, living for the past twenty years in the north of the country, known this Sinhalese man in Colombo? They owed this particular connection (and others) to their particular educational background, both parents having been in an ethnically mixed teacher training college in the late 1960s and having retained close links with their 'batch-mates' over the years. When informed that their daughter had been detained in Colombo, their respectable Sinhalese friend had hurried to the station to convince the police that he knew the family well.

This woman's family was English-speaking and middle-class, now of professional background in the north of the country. On the other hand, the families of lorry cargo-workers (either of Tamil or Sinhalese origin) would be unlikely to be part of such significant networks that traversed the terrain of Sri Lanka. Their class backgrounds would have limited their opportunities to form links to people of social 'respectability' and create such networks in the first place. Their occupational background would be equally limiting in terms of such opportunities. The lack of opportunity to create such connections, to become part of effective networks in other words, might explain why those from an economically or socially disadvantaged background persistently experience difficulties and vulnerability in their encounters with those in authority.

These stories with their relentless theme of suffering and distress resulting from unpleasant interactions with state and other authorities evoked the concepts of structural violence

⁶³ Interview 2:10

(Farmer 1995) and routine violence (Pandey 2006). Even if not living in the conflict zones, their relationships with state authorities were still fraught with risk and fear (though being of a politically suspect background rightly compounded their sense of insecurity and the consequences often dire); their lives were imbued with the violence of consequences stemming from official indifference, discrimination and neglect. This was their 'normal' social relationship with figures in authority, and we could certainly expect these qualities to continue to mark their relationship in a context of political violence as well, as suggested by Spencer (2007). Indeed, Kleinman, Das and Lock (1997) have pointed out that suffering is socially inflicted; to emphasise this aspect, they used the term 'social suffering' to describe the ways in which groups of people were made vulnerable and subject to hardship.

Making and Maintaining Connections

The most crucial element of having connections was being able to elicit a supportive response from them, when help was needed. Their active support is an important factor in tipping the balance in one's favour. However, there was no guarantee that influential people 'known' to the informants would offer help in difficult circumstances. The stories indicated that this depended on a number of factors, including who else was involved in the dispute, the levels of obligation, friendship and concern that 'known' people felt for the informants, their assessment of the risks of getting involved in a dispute, and their own level of confidence in dealing with authorities in question.

As mentioned earlier, getting involved in someone's situation of crisis was an exercise of social and political negotiation, from the point of view of the 'known person', i.e. the person doing the helping. Sometimes this was an easy exercise depending on one's own level of authority in the situation (e.g. as the GN) and at other times, it could be more sensitive and demand more complex resources and skills in order to show solidarity and intervene on

behalf of the person in need. Herman (1997) notes such acts to be political ones – whilst they may be relatively easy to sort out with no difficulty if there are no political or social complications, it could also be that even seemingly straightforward cases may be made more difficult because of some such complication. In these latter cases, more skill and networking may be required than can be provided by the ‘known’ person – and they may need to bring in more people (if they are committed to helping the person in need) or they may back off and declare themselves unable to further assist the person in need.

Herman (1997) argues that once a violation has occurred, justice can only be achieved in a social and political environment that is broadly supportive of this justice, a point also reiterated by Martin-Baro (1994). The points she makes are that the more people that agree that a violation has occurred (i.e. it is validated), the better the chances of justice and that the work of making more people understand the nature of the violation is not just the responsibility of the victim. It is also the work of those around her or him (i.e. the work of those who work in solidarity with victims – lawyers, doctors, family members, state administrators, local council members, etc). Most people are quite ready to avert their gaze from suffering and to dismiss it, and it is necessary to work against this tendency in order to alleviate such suffering (Scheper-Hughes 1992, Kleinman 2000, Das 1997, Cavell 2000).

To move from an individual’s situation to addressing the larger structural causes of suffering requires a move into the public arena. It engages more than ‘social capital’ or ‘connection’. Rather, Hoggett (2006) points out that compassion and anger are necessary pre-requisites to progressive and solidarity work – and he suggests that advocacy on behalf of those who suffer is necessarily emotional work, in that it is designed to engage the emotions as well as the intellect of the public in order to gain credibility and legitimacy for the cause. Even though it may seem obvious that the perpetration of gross human rights violation will be broadly condemned if known, there is nonetheless work to be done to ensure that the issues

are raised in a way that couches the moral dilemmas and provide clear evidence of the violation of human rights (see also for example Hayner 2001, Minow 1998).

Given the general importance of connections in Sri Lankan life, and their particular importance in situations of crisis meant that people needed to make these connections before a situation arose in which assistance was required. Not only should such connections be made, but they should be made in a form that appeared not to be insincere, solely pragmatic or sycophantic. Such forms were likely to lack the force of obligation that otherwise permeated the relationship. Furthermore, it was not necessary just to make these connections, but also to maintain them on good terms over long periods of time. This work of making and maintaining connections was referred to in the accounts from different sites in the study.

When talking about who had helped them in a dispute or during a problem, informants often referred to the history of relationship that existed with the mediators before the time for help had come about. For instance, Dev Ayya referred to the fact that the local council member had been his neighbour and friend for many years, attributing the numerous acts of support and intervention done on his behalf to this fact. The woman who shared her story of detention referred to her parents' long-standing friendships with the Sinhalese principal, and the many mutual kindnesses they had shown each other during their long friendship. In other stories too, informants mentioned the different ways in which either their own efforts or their circumstances had contributed to expanding their networks.

Others spoke about the difficulties of lacking the financial resources or the time to invest in developing useful relationships and connections. From the perspectives of many of them, simply being richer, better educated, working for the 'right' political party, or being of a different ethnicity would have ensured the right connections that could have helped them achieve a positive outcome in a dispute or problem. In one study on well-being conducted in

the south in Sri Lanka, respondents were asked what enabled them to develop social connections which they valued and felt were effective for their well-being. The most frequently mentioned reasons were financial security, having the time to invest in relationship-building, family support, one's personal conduct and background, and references from other influential individuals, (PADHI 2008).

One way in which families in relatively disadvantaged situations boosted their connections was through political work. Working on some politician's campaign, helping to make or stick posters, or in some other latching onto the active circle of a local politician provided a ready and obvious means by which to gain some political connections in the face of limited social and occupational ones, at least in the south of the country (see Amarasuriya, Mayer and Gunduz 2009). The political schisms that existed between the north and south of Sri Lanka made it difficult to find a political link that effectively spanned the geographical terrain. Furthermore, because the political schisms were along ethnic lines and there were comparatively lesser numbers of politicians in power from ethnic groups, those from different ethnic groups found their power also limited accordingly. The social and political segregation in this way had a definitive impact on the possible connections and networks of the Tamils and the Muslims as well as poor Sinhalese.

The dangers of not maintaining good connections were particularly pronounced in the case of those in vulnerable categories of the suspicious. These risks were heightened where the security situation had encouraged greater surveillance and reporting capacities within the village. In these circumstances, people became increasingly reliant on the goodwill of their neighbours and relatives, and of other people in the village or its surrounds with whom they engaged on a daily basis. Both Dev Ayya and Ahmed, (but also many others in this research) referred to the way in which jealousies, resentment or hostility were forces which drove some to take advantage of an arising vulnerability for a family or individual, if an

opportunity to do so presented itself. It was necessary for those in situations of vulnerability to work to maintain their important social connections and to maintain these in good form. Firstly, they were reliant on other people not denouncing them to the police or other authorities for petty reasons, and secondly if faced with such a situation, they required the help of others to establish their credibility and innocence in the eyes of the authorities. This raises the question, how does having connections provide a means of establishing credibility, and how do they help to dispel suspicion? This is the question that I explore in greater depth in the next section.

Connections as a Means of Becoming ‘Known’, Becoming Credible

One day, while walking back from Podimalwatte where we had been busy conducting interviews, the GN remarked to me about the impossibility of the research team’s ability to move around and interview people so freely if we had not come through him. He explained that he and the village were helping with ‘the security situation’ in the hill-country under the new police regulations in the previous months. The police had appointed in each village a committee which was to liaise closely with the police and was required to report anything suspicious. This was not new news to me. A month earlier in the southern sites too, I had heard about village committees being set up by the police, with similar reference to the security situation. The overt function of those committees was ostensibly the protection of the village from militant attacks or infiltration by reporting anything suspicious. Thinking that an understanding of what seemed to be a current phenomenon in the different sites of research would be useful, I asked for a more detailed explanation on what could be ‘anything suspicious’.

“You know,” he said, “people coming and going. We don’t know who they are. They [i.e. the LTTE] may come and hide in the hills, so we should be careful. In the country’s current

security situation, we have to know who is coming and going.” I was curious to know the impact of such a regulation on the everyday mobility of people in the hill country, many of whom I had come to know were working outside of the village. Also, given the recent Deepawali celebrations, I asked if relatives of estate families were exempt from these regulations. The GN denied this. Even relatives, “Couldn’t just come and go. They have to inform us.” He reiterated, “They can come from the North and hide easily here. Most of the people here are Tamils, so we cannot be really sure who they are when they come from somewhere else.”

I asked what precautions a family would have to take if they were to have a relative stay with them for a few days, especially with stories such as Dev Ayya’s fresh in my mind. The GN informed me that they were required to bring a letter stating who they were, either in the form of a police report from their local station or a letter from the GN certifying who they were. I mentioned that it might be difficult to do so, as not many GNs were as obliging. He concurred on this point but also pointed out that the GN, in his opinion, was someone who usually knew everybody in his or her area and would know who they were. “If someone was innocent,” he explained that they would not have any problem getting such a letter because not having such a letter would make them suspicious.

In revisiting the conversation I had with the GN, one very apparent point was the importance for the authorities of ‘knowing’ who people were; how could they be certain that people who they said they were. The GN thrice returned to the idea of ‘knowing who the people who are coming and going’ and its importance in making decisions about who to suspect or not. Establishing knowledge of a person became an important focus in the stories about suspicion. According to him, even if they did not personally know the person, the GN in the place of residence would ‘know’ the person and a letter of introduction and approval from

that GN would be sufficient for this GN to know who the person was. On the other hand, the lack of a letter would make them suspicious.

In making these points, he juxtaposed the category of the ‘known’ person against the ‘unknown’ person and implied that the ‘unknown person’ was (almost always) treated as a ‘suspicious’ one. The urgency with which he talked about this revealed the challenges faced by those in offices of power who were required to reach judgements about the people with whom they were confronted yet about whom they knew very little. His statements suggested that ‘unknown persons’ were a problematic category for people in positions of authority and office. Part of the task of ‘unknown’ persons was to make use of ‘known’ people in order for themselves to become ‘known’.

The GN, the local council member, and the mosque leader, in making their respective appeals on behalf of Dev Ayya’s niece and Ahmed’s cousin, all highlighted the fact that they ‘knew’ the person concerned. They assured the police that they knew the family background, the character of the person concerned, and that because of this knowledge could credibly vouch for their innocence. These details helped the police to verify who the person was prior to making a judgment about the detained person.

Connections help to locate the person socially

At its most evident, the information given by the ‘known person’ about the family and character of the detained persons provided a strong personal image and concrete background details of the family, their occupation and their general reputation in the village. Such images and details provided information with which the police could sketch in elements of a person’s background, history and character. This helped the detained person become ‘known’ in both a personal and social manner. These personalising details served a

protective function by acting as a buffer against the vulnerable status of the ‘unknown’ person category.

This process of ‘personalising’ someone challenged prevailing perceptions and stereotypes, and instead coloured the detained person with individual, personal, human and most importantly shared social characteristics that helped to differentiate the person from an abstract group and brought out salient aspects of human, social and moral life. For example, the idea of Tamils as linked to suspicious and terrorist activities was minimised with the foregrounding of other aspects in less alarming and more shared social spaces such as respected school-teachers, kindly neighbours and villagers, strong moral characters, etc. The information provided by the interveners about the detained persons also included a strongly moral component – i.e. the image conjured up was of someone who was either good (an active church member, a conscientious son) or harmless (an innocent daughter, a naive character). This appeal to the moral aspect also played an important role in the negotiation process as was seen in the previous chapter.

Equally and perhaps even more crucially than its personalising content, the information provided by the intervener helped the police to locate the person socially in a set of particular circumstances, relationships and networks. The identification of the social world of the detained person included information about the social status of the detained person and her or his family (e.g. a teacher’s daughter, the niece of a close friend and neighbour of the local council member, a businessman’s son, or a poor lorry driver and his friend). In addition to their circumstances, the mediator helped the police to know about the types and quality of relationships and networks in which the detained person and his or her family were embedded. This knowledge was likely to play a significant role in determining how the police will treat the detained hitherto ‘unknown’ and ‘suspicious’ persons.

Assessing social status and the dynamics of power

Establishing social location was, to my general observation, a frequent activity in Sri Lanka, and was not only of importance for the police. When being introduced to someone else, it was never enough to supply 'basic' information such as one's name, profession or place of origin. People tried to establish a social reference point in the form of another mutually known person or a particular school. For example, most urban and many rural Sri Lankans were familiar with the experience of trying to find out or being asked which school (and which 'batch') a person they had been introduced to went to or to find out a common friend, relative or other such point of reference. Such social information was crucial to establishing how one should treat someone else, i.e. with what degree of familiarity, intimacy and support, and to ascertain how much one's and the other's social worlds overlapped. The identification of the social world rendered people socially legible, so that interactions could be conducted in a way that conformed to reigning social norms and practices.

A crucial aspect was establishing whether an 'unknown' person was status-wise, one's peer, superior or inferior, another important factor in determining the degree and nature of interaction. Being part of a subordinate, equal or superior category within the social world dictated particular rules and norms for engagement. Thus it was that Tamil doctors were rarely if ever questioned at police checkpoints and well-off and high-status Tamils were not subjected to harsh treatment at checkpoints at the hands of common police officers, until quite recently apparently. On the other hand, social inferiors could well be subjected to rigorous interrogation, careless attention to due process in their arrest, and detention. But it was difficult to make these distinctions simply based on appearance and origin. A detained person who might appear socially inferior could nonetheless be in a position to request the protection and patronage of a person who was politically or socially more powerful than the police. If the person (or her or his family) were able to successfully activate such a

connection, then the response of the police were likely to substantially change. Sarat, Douglas, Umphrey and Clarke (2007:3) state that the police 'depend on and deploy ways of knowing that bridge the official and social worlds, depending on a set of social assumptions built up and transmitted through their own organisations and responsive to the distinctive demands of their work.' These dynamics recall the several studies that focus on the pervasive levels of patron-client relationships in Sri Lanka (Hettige 2000, Lindberg & Orjuella 2011, Spencer 1990). Patronage takes the form of loyalty obtained through the distribution of benefits or in anticipation of such benefits. These include a range of services and good from jobs, money, protection, contracts, permits, luxury items, and basic necessities. 'Unknown' persons are then those not under the protection of any patron.

Studies which emphasise positioning in social interaction also point to its role in the dynamics of recognition and validation (Herman 1997, Clancy & Hamber 2008). This is also in line with the idea that personhood is only recognized and acknowledged within a social context. Herman (1997) argues, for example, that after psychological development (in childhood) and restoration (following traumatic event) of personhood, can only take place in a social context – of being recognised and acknowledged in multiple ways within the social relationships with others, for example as a daughter, a friend, a client, a customer, etc. Conversely, recognition and acknowledgement of a person's personhood is also often only bestowed in a social context. Referring to the situation of refugee Jews and those in camps during the Second World War in Europe, Arendt (1976:297) states, how 'the loss of all human relationship' is 'the loss, in other words, of some of the most essential characteristics of human life.' She goes on to say that having 'a place in society' guarantees that some recognition of 'more than the abstract nakedness of being human and nothing but human.' It is the loss of community, of polity, to which she attributes the condition in which someone can be stripped of human rights and violated, whereby someone loses 'the very qualities which make it possible for other people to treat him as a fellow-man' (1976:300), for

example to grant them equal standing before the law, protection from the state or care and compassion from the community. In a similar vein, in these accounts not being recognisably embedded within the accepted socio-political community exposed the informants to the gravest of dangers.

There are two other dynamics which need to be acknowledged; one is the fear of the unknown person generated in a context of violence and risk that leads to hostile and aggressive actions. Kelly (2006) talks about the way in which fear and suspicion operates in the heavily militarised borders between the West Bank and Israel where Palestinians and Israeli soldiers encounter each other at checkpoints. Quoting Ben-Ari (1998:80), he states that fear operates to conflate the 'distinct categories of civilians and soldiers into one class of enemy.' He describes how the constant suspicion and questioning of the status of the people from the village of Bayt Hajjar who cross the border led to the shooting of four villagers who crossed the border without permits. Kelly also points to the contradictions in Israeli law which force West Bank Palestinians into lives of questionable status and then to experience the risks and uncertainties that come with these (1998).

In the Sri Lankan context too, the contradictions and ambiguities of law generated by the multi-layered legal frameworks around issues of detention, suspicion, paramilitary operations, military policing, intelligence, confessions, and evidence under regular and emergency law place citizens at risk through these very ambiguities. In addition, the changing definitions of how 'suspicious persons' and in particular threats to the state are to be determined (i.e. they could belong to one or more of the following groups: young, Sinhalese male graduates or university students in the late 1980s, those from the North, Tamils, Muslims, people who work for foreign-funded NGOs, those who disagree with the government, journalists, etc) make it more difficult to determine who is safe and who is not, from the point of view of the state. The stakes are high in such a situation, and it becomes

necessary – through connections, through assault or torture – for agents of the state to validate the ‘unknown’ persons it encounters (see Ackroyd et al. 1977).

There are a number of studies on how the police make decisions about the people whom they encounter in their work in other contexts (see for example Levi & Valverde 2001, Obeweis & Musheno 1999, Skolnick 2011). These authors broadly agree that the police ‘develop a perceptual shorthand to identify certain kinds of people. ... to make hunch judgements based on loose correlations,’ and that they deny ‘the uniqueness of individuals’ and ‘enfold them into social categories already marked for exclusion and invocation of coercion’ (Skolnick 2011:4). Kelly, reviewing David Lyons (2007) book on surveillance notes that a senior police officer in the UK stated, ‘we do need to go to a place where we do know who people are’ (2008:467).

Some studies argue that it is only through considerable effort and strong elements of socialization and lobbying that compassion towards strangers, and recognition of and care towards the suffering ‘unknown’ person can be achieved (Hoggett 2006). For example, it is important that pain and suffering of the victims is made comprehensible and identifiable to others, not so easy a task given the intrinsic nature of pain (Scarry 1985). It is also necessary to challenge and overcome the desensitisation that has occurred from popular political and media portrayals of the suffering, along with ideologically-driven depictions of victims of violence designed to counter empathy or identification on the part of broader groups of the public (Cohen 2001, Kleinman 2000, Schmid 2000). The depictions often portray the victims as potential terrorists, as potential enemies, as being somehow responsible for or complicit their situation, as morally suspect or corrupt, as socially unacceptable etc.

The very presence or invocation of powerful mediators, such as figures of authority, respectability or power, signalled important information to the police about the circumstances and relationships of the detained person and her or his family. Importantly

their ability to elicit supportive action from these figures revealed telling detail about the real capabilities and status of the detained person and her or his family. Thus, for the police the very appearance of particular types of people (e.g. a politician, a state official such as the GN, a teacher or a principal, etc) at the police station and their interventions gave crucial information about the type of social circles in which the detained and their family might be placed, the particular set of relationships and networks in which they were embedded, and the intensity and quality of these relationships. The impassioned and repeated interventions of the local council member on behalf of his neighbour, Dev Ayya, could be contrasted here with the rather more lukewarm and dutiful request for information made by the mosque leader on behalf of Ahmed's detained cousin, Ismail, and the even more cursory inquiries about his whereabouts at the police station by the Minister of Resettlement. Thus, the everyday politics of recognition suggest that it is important to become 'known' and to demonstrate committed interest on the part of the intervener.

Inherent to this logic was an acknowledgement of the real effects of powerful 'connections'. The extent to which one's social world constrained or enabled a person in Sri Lanka has been noted in this study. The social networks in which people were embedded represented fundamentally what they were capable of being and doing. Their relationships placed obligations on people to act in particular ways. In these accounts, the police showed some confidence if the mediator who appeared to make a representation had some power of consequence which could be brought to bear on the person they were helping. Rosen (1989:30) makes a similar point when he notes the importance of the criteria of the 'effects of occurrences on people's relationship in judges' decision-making.'

The general acceptance that socially locating the person in a set of networks would be sufficient grounds by which to establish the innocence or suspiciousness of a person revealed a number of important assumptions about the ways in which sociality mattered in Sri Lanka.

The list of people ‘known’ to the detained person and her or his family helped to establish the contours of possible identities and motivations; and the police could then assess these in relation to their perceived hostility to the state. Thus, it was possible to make an assumption about the particularities of invested interests, loyalties and affiliations, and corresponding conflicts to which someone was subject by way of her or his particular networks, connections and relationships. Moreover, knowing the set of networks in which someone was embedded gave an indication of the set of obligations to which she or he was subject and a glimpse of what was possible for a person to do. Valverde’s (2007:84) statement, ‘that the credibility of the witness [and I would argue, of the victim as well] as a moral person is crucial is, one of the facts about law’s knowledge that social scientists simply deplore and rarely seek to understand.’

‘Connections’ then functioned to delineate the boundaries of the realities and possibilities of power within people’s lives. In order to grasp a person, one began with their associations and their relationships, and from there formed a picture of possible influences and courses of action to which he or she is subject but also could he or she engage in. It was this reality that was given acknowledgement in the police’s and the GN’s actions of wanting to know who a person was, i.e. in other words, who the person knew, before making decisive judgements about his or her innocence and suspicion.

Connections, Power and Protection

It would be misleading however to suggest that it was only the force of credibility provided by the strength of connections that compelled the police to release someone from custody. There was another set of dynamics discernible in the stories provided by the informants. This was the dynamic of protection and power. In a study conducted in 2005 by Transparency International Sri Lanka on police relationships and perceptions of the police

service, police officers rated the lack of resources and the ubiquity of political influence as two major causes which prevented them from carrying out their duties efficiently (TISL, 2006). Describing their predicament in greater detail, police officers indicated that they were cautious about arresting or prosecuting certain individuals (even ones who were known to engage in criminal activities) because they believed that powerful politicians would have them transferred to another administrative district.

Equally problematically, junior police officers stated that the senior officers would positively act on requests and appeals from local or national politicians (or others in high-ranking positions) asking them to release suspects in custody. Junior officers who had the misfortune to have arrested such a 'protected' figure then had to face the displeasure from their seniors for having made such arrests, sometimes with negative consequences on their personnel files and possible promotion. This meant that police officers were required to constantly analyse and estimate the social background, location and possible links of those who they detained, apart from any considerations about whether a person was particularly suspicious or guilty. The description provided by these police officers tallied with the assertion from our accounts that, after detaining an 'unknown' person, police waited to see what networks and linkages were brought into their view prior to making their decision to further detain or release the person in custody.

These links between police officers and influential politicians were not entirely to do with fear of negative repercussions but sometimes also to do with a sense of allegiance. For many police officers, their recruitment into the police force had been facilitated by a politician or other high-ranking member of the state administration. This observation could be linked to Fernando's statement that the expansion of the Police Reserve Force, numerically larger than the regular police force in Sri Lanka, was beset with issues of political influence in recruitment procedures (Fernando 2005). Letters and personal recommendations from

politicians played a large part in who was selected or not in these recruitment drives. The sense of obligation engendered by such support, explained the police officers in the TISL study, made it difficult for them to oppose or ignore a request by these persons once they are in the job. A few police officers also stated that they were reluctant to antagonise local politicians, especially if they had to work together with them in an administrative area. Whilst politicians were the main source of 'political influence' identified by the police officers, businesspeople and criminal groups were also included in the list of those influencing their decisions and conduct. These police officers' statements made clear the reasons why the family and friends of those who are arrested or detained searched for effective powerful 'connections'. Not only then did the detained become 'known' to the police, they were also known to be under the protection or patronage of a particularly powerful person.

The narratives of the informants in my study showed that local respectable figures with status were also able to influence police decision-making and conduct although they lacked the obvious power of the politician or criminal. Nonetheless the appearance of a socially high-status person (such as a school principal or a religious leader) at the police station on behalf of the detained person was also likely to sway decision-making favourably for the detained person. The police officers talked most resentfully of 'political influence' in their work in the TISL (2006) study; yet they did not identify the reality of 'social influence' in their work. 'Political influence' was understood as an irksome but unavoidable hindrance to their ability to carry out their work effectively, and acknowledged to be one reason why the police were viewed as corrupt or partial. 'Social influence' of the type mentioned here remained invisible and acceptable to the police officers and for many of those who provided their stories of how they successfully engaged with the police. It was only those without either the political or the social connections who identified and viewed both forms of

influence on police decision-making as a form of partiality and a source of injustice. These were often the most marginalised groups of people.

Having ‘connections’ was a means through which power could be directed towards others and which could obtain protection and safety in a time of crisis and need. ‘Connections’ could also map out the contours of groups of people who remained above the law. It was difficult to determine whether police officers involved in the cases were personally convinced by the assertions of innocence or whether they simply went along with the recommendation, knowing their own limited ability to ‘prove’ a case of guilt or suspicion. By acting so, the police contributed to making those connected to high-status figures become ones of consequence and real power. Social class and status acquired real effect in the world in this way. It was for this reason that people without the appropriate connections or social status tended to feel vulnerable and powerless.

Connections ‘connect’ the Person and the State

The everyday nature of the state has been discussed in a number of recent books on the anthropology of the state (Das 1995, Fuller & Benei 2001, Gupta 1995, Tarlo 2003). In these books, the authors point out that the earlier conceptualisations that separated ‘state’ from ‘society’ were misleading. Their detailed ethnographies emphasised that the perception of the state as a separate entity in everyday society resulted from the efforts to enact boundaries by the representatives of the state. Through these efforts, one perceived a ‘state’ in the everyday encounters between citizens and those who represented the state. Furthermore, the people who inhabit the spaces of the state were from the ‘local worlds’ (Das 1995), and should not be considered separately from the social world they inhabit. Moreover many authors point to the fact that the state is not a singular entity, comprising rather different departments and offices having different and sometimes even contradictory

agendas. The stories in this study too reinforce the idea of a 'state' that is inseparable from 'society' and point to the non-singular characteristic of the state and more particularly of state agents.

The non-unitary self of the state agent

Kusuma came from an economically better off family in Mahagoda, and related one story in which she described how she had helped to settle a problem of domestic violence in her next-door neighbour's house.⁶⁴ Her neighbours were a poor couple with three children. The husband was a day labourer and his wife did coir work. It was the wife who maintained the household economically, because the husband was, from Kusuma's description, severely alcoholic and "drank his money away". Their youngest child, and only daughter, was to sit her secondary school examinations that year. The husband, according to Kusuma, often started the day drunk and most often than not, would end up beating his wife "even over the smallest problem. I could hear them in my house. If the beating is too much, she runs to our house. Then we also get involved and tell her husband not to beat her. She stays here till he leaves the house."

Kusuma explained that "the daughter of that house is a friend of my daughter's" and when the daughter approached her for help, she felt sorry for her and wanted to do something. "My brother works in the police station," she went on, "and with his help, I entered the case into the criminal section of the police. It wasn't just a family dispute then. Otherwise they would have entered the case into the small entries casebook, and this would not have helped. When it is a criminal case, the Officer-In-Charge will be the one who will speak to them, and it is more serious. The man was more scared of the OIC. They had to go there every Sunday and meet with him. This was a good method to resolve the case. They did not fight for a month, while the exams were going on. Even now he does not beat her that much," she

⁶⁴ Interview 1.3.8

concluded. In stating that her brother at the police station was the one who helped them to enter the case into the criminal section, Kusuma described how her influence changed the way this situation was defined from other similar cases of domestic dispute, “not in the small entries casebook, but in the criminal section.”

The greater effectiveness of the intervention in this particular case could be attributed to how Kusuma’s policeman brother helped to change the definition of the situation in recording the complaint at the police station. In talking about this case, however, Kusuma did not appear to think it problematic in any way that she had used her influence of having a brother in the police force to intervene in this case. Moreover, she also credited her brother with having been supportive and helpful, as a brother and as a policeman. Kusuma’s appeal to her brother was because he was a police officer and her brother; just as Dev Ayya appealed to the local council member because he was his neighbour and the local council member. Sudhaharan called upon his friend and politician to help him when his son was detained in Colombo. In many of the stories from this study, the mediators were in some way socially linked to the informants which was why they had been appealed to, in the first place.

These stories demonstrated how the people who held offices and positions of authority in the state also belonged to the society in numerous other roles, and as such were not immune to the forces of obligations and relationships which drove friendships and familial bonds. The multiple roles of these different mediators require some further scrutiny because it highlights an important aspect of the way ‘connections’ work. In helping out their friends, neighbours and relatives, many of these mediators conceivably were responding in ways in which they saw themselves (and were perceived) as helpful and supportive. They were fulfilling their roles as good brothers, friends and neighbours.

In their edited volume on emotions, politics and society, Clarke, Hoggett and Thompson (2006) raised the issue that a unitary conception of the self hindered understanding human

processes of thought, affect and conduct, especially with regard to explaining how these shaped social relations and acts. The self that they described was made up of multiple parts and had different valences. These selves-within-a-self (or selves-within-an-individual), they argued, could be contradictory, complementary or independent of one another; they could, in fact, hold differing ideas, feelings and values simultaneously. When talking about the self, Battaglia highlights its 'nonsteady state', and its 'multiplicity' (1995:1). She asks the question, 'What use a particular notion of self has for someone or for some collectivity?', indicating that people represent themselves to others in a myriad of manners depending on the situation (1995:3). The stories in this research point towards something similar. Kusuma, when appealed to by the daughter of her neighbour, utilised the 'connection' she had at the police station in order to help her. Similarly, when relatives and close friends appealed for help, the stories suggest on many occasions, policemen and politicians responded in their social rather than official roles, even though they would be using the powers of their official positions to carry out these requests. Yet, neither they nor the informants themselves found these to be problematic (or a conflict of interest) in any sense. It is important not to overlook the multiple selves of the agents of the state, and the way that they might not prioritise the disjunction in how helping a relative contradicted their (intended) role as an impartial agent of the state – even if this led to widespread allegations of partiality. Even where there was such self-recognition, it might be difficult for agents of the state to reasonably refuse the requests for help from their relatives, neighbours and friends without compromising their relationships with these people. These obligations pointed to one of the fairly powerful ways in which people from within and outside the state were linked in numerous ways and one of the ways in which justice became compromised in a pervasive yet seemingly acceptable manner.

The self-referential nature in the state verification process

As mentioned earlier, most of the frequent mediators were themselves part of the state apparatus themselves (for example, the doctors, politicians, state officials, council members, police, GNs, etc). More importantly, because many of the disputes and problems resulted from having to negotiate or encounter the state (e.g. detention, application for lost ID cards, disputes over land titles, or planning permits, etc), what these also indicated was that, when required to negotiate with the state, other agents of the state were, in fact most often, the most effective mediators of all.

In trying to decide on the threat posed by an ‘unknown’ person or in having to offer state services to a person whose social and political background might not match the ‘desired’ characteristics, these agents of the state depended on verification from other agents of the state working in other departments and offices. It appeared that the state fell back on itself to verify and validate information pertaining to its citizens. For example, the GN who talked about the suspiciousness of ‘unknown’ people mentioned that it was only through a letter from another GN or a police report that he would feel confident of the innocuousness of the ‘unknown’ person. Equally, it was only upon receiving the verification of details from another police station that Sudhaharan’s son could be deemed innocent and released by the police in Colombo. That these verification details could only be sent at the instigation of Sudhaharan’s politician friend pointed to the limitations of ‘unconnected’ persons to become ‘known’. One needs to ‘know’ someone in order to make oneself ‘known’.

What was also captured from the different stories in this study was the way that agents of the state were willing to dismantle certain requirements of the state for some citizens, i.e. those to whom they were connected, yet would repeatedly and aggressively erect them for other citizens to whom they were not beholden. As a result, those with ‘connections’ to the state were able to escape the formalities and seeming rigidities of the ‘state’ with regard to

different process and criteria when it came to managing their disputes or problems. For example, a letter of settlement regarding land ownership sufficed for one citizen with good political connections whilst another (without similar connections) was required to obtain a title deed to negotiate very similar land disputes. Those who lacked such connections to the state through its various agents were very aware of the existence of and the ways in which the powers of the state were used by those in the state to privilege and protect themselves as well as those who were connected to them. The reaction to this knowledge however was not so much to challenge or change this system but instead to work within the system and to become linked to those in positions of respectability, authority and/or power. This suggests that any attempts to change the current justice-seeking process must consider people's understanding and use of the system in addition to efforts to address any institutional shortcomings.

Conclusion

As can be seen from this chapter, a person's chance of having a fair and relatively pain-free justice-seeking process depended on their having established connections that would put them in the realm of 'known persons' to formal or official interveners (e.g. the police, the GN, the mosque trust board leader). Becoming a 'known person' involved using other 'known people' to socially situate oneself. In this instance, those in positions of authority used the information provided to guide their decision-making in their treatment of the person with whom they were confronted. This was particularly crucial given the conflict context, since authorities (such as the GN or the police) were required to assess the level of threat or challenge the person posed to the state to the status quo. Activating the right 'connections' was a strategy that people frequently used, and more importantly, needed to use since it helped to make them 'known' to the authorities and thus to dispel suspicion or become

worthy of support. Becoming socially known was important in eliciting feelings of empathy and duty on behalf of the state agents.

The stories also revealed the importance of making and maintaining connections, to have an established network of persons who may be willing to help, in disputes, problems or other situations of crisis. This was not an easy task for disadvantaged groups: a history of exchanges and relationship-building requires time, money, access to resources, or access to circles of power (through family history, jobs or education for example), that the poor and vulnerable do not have. Wealth, class and ethnicity, as well as political affiliation and activism, influenced the making and maintaining of useful social connections through which one could become a 'known person', when required by the state authorities. These elements also created the 'mediators' who engaged on behalf of people in trouble.

Successful mediators tended to have those social, economic and political characteristics that made people 'known' to authorities. The people who represented effective connections in the collected stories were usually recognized figures of authority, respectability and power. These were not just peers but rather social 'superiors'; many of them were in fact other agents of the state. There was a heightened reliance on social connections in the prevailing 'security situation', where denunciations and other forms of opportunistic violence were more commonplace.

A person's or family's network of effective 'connections' marked the fault-lines of access to resources and forms of social protection. It was therefore easy to understand how someone with all the 'right connections' could manoeuvre through the state apparatus relatively problem-free, i.e. without having to encounter its more unbending and implacable bureaucratic nature. They would never have to experience the particular qualities of the state that threatened to "turn blood to water" as for some of the informants in this study, because

their social backgrounds cause them to be treated with respect and sympathy when negotiating with the state.

It is worth exploring the question of trust in communities where social ‘placing’ is important as part of enabling social interactions and exchanges, even where these interactions and exchanges take place within the more seemingly bureaucratic and formal space of the state. I raise this and other suggestions for further research in the next and final chapter of the thesis. I also summarise the findings in relation to the key question raised at the beginning, ‘why justice appears elusive to so many Sri Lankans’, and I look at the implications of these findings for initiatives on justice and legal reforms.

Chapter 8 Conclusion

I began this thesis with the hope of understanding better why so many people professed a deep scepticism for a fair chance of justice in Sri Lanka. Disputes and problems have a long history of being used as a means of accessing the ways in which justice works in different places and societies. I chose to collect and examine personal accounts of disputes and problems, and their settlement and management. 325 accounts from 110 informants were collected as data. The accounts were from three geographical sites in Sri Lanka: Kandy, Puttalam and Galle districts. These represent different social and historical social backgrounds and communities. I also chose to do my research outside the conflict zones of Sri Lanka in order to understand better the general process of justice-seeking in Sri Lanka.

The accounts from these three research sites revealed the basic details of justice-seeking in each site: the most common types of disputes, those involved as mediators, what they did, and how their involvement and actions contributed to the outcome. These were presented in Chapters 3 and 4. Two of the most striking features that came through in the accounts were the prevalence of actual, anticipated or threatened violence in the lives of many people as well as the predominance of the police in the negotiations and exchanges of the dispute and problem solving process, especially in the context of historical impacts of the conflict on law and law enforcement. These two elements served to bolster the power of the state and maintained the status quo, as described in Chapter 5. Much as I had initially intended to step away from the conflict-affected zones of Sri Lanka, the accounts reveal that in all three sites, the dynamics of the ongoing armed conflict at that time continued to play a key role in shaping disputes and problems as well as their outcomes. In Chapter 6, I showed how being politically or socially 'suspicious' in the 'opportunistic' political climate of that time could lead to a heightened vulnerability, with potentially life-threatening consequences. The

crucial protective element in such a situation is to become 'known' by establishing one's credibility, legitimacy and respectability to state authorities through acceptable sources or by indicating that one is under the patronage and protection of powerful people, as explained in Chapter 7. The process of becoming 'known' involves getting someone 'known' to the police to share their knowledge of you and endorse your status; 'known' persons were generally respectable people in positions of authority, power or of high status in the community. In this, the concluding, chapter, I hope to look at the implications of these findings for the understanding and approach to justice in Sri Lanka and for reform efforts in law and law enforcement. I also suggest some further areas of study.

As the accounts in this thesis have revealed, there is little possibility of having a justice-seeking process that is independent of prevailing social and political forces; both are mutually constitutive and reinforcing. Even those who are positioned as impartial or independent mediators cannot escape the fact that they too are *inside* this process. This indicates that we need to pay close attention to the social and political circumstances in which disputes and problems occur and to the context in which actors become part of the process that shape and contribute to the outcomes.

The study has shown that the actors, including the various state agents who take part in mediating the process, are themselves personal and social actors, with multiple obligations, agendas and interests. As such, they are sometimes subject to various points of conflicts of interest. This multiplicity of identities and interests compromises and complicates the possibility of a just outcome. Actors are required to resolve any internal conflicts and to make their choice 'impartially, independently'; yet there is little attention to developing such a skills- and mind-set or on emotional, social and cognitive means by which to reconcile these conflicts in without compromising relationships or personal well-being.

Rather, the process state agents employ to assess the situation and their fellow citizens may vary with what is currently salient in their own set of identities, those of the citizens whom they encounter and situation in which all are embedded. Braman and Kahan (2007:114) use the term ‘cultural cognition’ to describe the general ‘social and cognitive mechanisms [that] guide human decision-making.’ They question the notion that it is *always* political values and interests that direct the action of legal actors, rather pointing us to important ways in which socio-cultural values orient mediators and decision-makers to particular outcomes through a culturally-inflected reading of appearance and evidence, in addition to more pragmatic considerations. Speaking of the court, he argues that any unresolved norms and values in the broader social context will find its strongest expressions in the courtrooms. I would like to add that they would be equally felt in any of the stages of the justice-seeking, dispute-resolution process, as has been shown in the accounts in this thesis.

The findings of the thesis have also fore-grounded issues of indeterminacy, uncertainty and the difficulties of ‘knowing’. Sarat, Douglas, Umphrey and Clarke (2007:3) argue that the ‘law’s ways of knowing are historically specific, evolving in response to developments both internal and external to law itself.’ Because the legal and law enforcement context in Sri Lanka has been shaped by its violent past, it is necessary to recognise this dynamic and its significance in the justice-seeking process. How can the state *know* about the intents and purposes of those whom its agents encounter in the course of their work? In the post-conflict context of Sri Lanka, *why* does the state still insist on knowing about this, in order to treat more consequently the problems of any particular citizen? Currently, the responsibility of having to demonstrate to the state that one is a citizen worthy of support, service and protection lies with people themselves. Yet the paradox is that those who may be in the most need of state protection are often those who do not possess, and are unable to demonstrate, the requisite ‘connections’, making them doubly vulnerable.

It must be acknowledged that a justice-seeking process that is malleable to social and political forces benefits many groups, not least, those in power and authority seeking to maintain the status quo. This has been amply demonstrated in the recent years where the Sri Lankan judiciary have suffered some significant setbacks, the most important of which was the politically-motivated impeachment of the Chief Justice in early 2012. The impeachment is said to have been instigated as a result of the Supreme Court obstructing a bill citing constitutional irregularities. The bill, creating a centralized development authority, would have brought several million rupees under the purview of one of the Ministers who, as it happens, is also the President's brother (www.groundviews.com). There was only a cursory investigation into the Presidential allegations of corruption against the Chief Justice and her husband which followed the controversial Supreme Court ruling and a rapid progression to the completion of the impeachment process. The way that the situation unfolded appeared to be based on the similar dynamics found in the accounts here, from within local communities, writ large at the highest levels of government and law enforcement.

This is partly why I have some difficulty with accepting the premise of most efforts that focus on police and legal reforms. They typically emphasise measures towards improving institutional systems, improving technicality and professionalization of the force, combating corruption and reducing interference and disruption to police service (Fernando 2009). This thesis suggests that another crucial element is overlooked by focusing on legal reforms in this narrow manner. I have shown that justice is compromised not only, as it is often asserted, as a result of an under-resourced and under-trained police force or heavy-handed political interference but equally as well by the actions of ordinary men and women, who anticipate, expect and request police conduct that compromise the possibility for justice.

This thesis suggests that the problems lie in the history and sociality of relationships between people, and between the state and the people. What is observed agrees with Twine's

(1994:9) statement that ‘human beings make themselves and their social institutions’ within the constraints of the historical contexts which have shaped these institutions. As revealed through the accounts, ordinary citizens of Sri Lanka are implicated in the perpetuation of an unjust process, through the choices they make and the actions they undertake. Rather than overcome or challenge the underlying dynamics which drive the justice-seeking process, many choose to, or have little choice but to, participate in this system and process. The choice they face is whether or not to face the brunt of the state’s indifference, contempt and even anger if they refuse to play by the rules, i.e. they disregard the imperative to become ‘known’ to the key mediating figures. Their acceptance and strategic use of police brutality similarly undermines the process of justice.

One of the key challenges then becomes how to engage with public opinion, and more importantly, public action on these issues of justice-seeking. It is difficult to bridge the gap between those who are ‘known’ to the state, who enjoy its protection, and who, because of who they are seen to be (i.e. non-threatening to the state, high status, etc.), can reasonably expect to be treated with some level of decency and sympathy by the authorities, and those who suffer the harshness of the system because they are socially or politically suspect or because they have nothing to offer in the way of ‘connections’ or patronage.

Halpern and Weinstein (2004:314) talk about the importance of moments of emotional resonance, when it becomes possible to recognise and empathise with those who have very different experiences of the same structures and systems. This thesis, I hope, offers one such moment of emotional resonance to those who sometimes un-reflexively participate in the system. Each time someone relies on ‘connections’ to become ‘known’ to the state authorities in order to receive better service or a more sympathetic encounter, these practices are reinforced. It makes it more difficult to demand a state which can be reasonably expected to recognise its duty to serves all its citizens fairly.

Halpern and Weinstein (2004:314) also argue that individual efforts are not sufficient to overcome larger 'the social forces' that polarise people. A broader movement is needed, and yet this movement has to be initiated from the sum total of many individual actions and convictions. One of the questions that I have struggled with is how to approach the question of reforms and of change to the justice-seeking process as it stands now within the public arena. The interviews and conversations I had with activists and reformers remind me that many of those who try to 'do good', to lend themselves and their support to those who find themselves at the less powerful end of a dispute, still need to utilise many of the same strategies that those who seek to maintain the status quo do, i.e. they convince the state authorities to act, by representing the interests of that person or family. This is seen as a necessity, and in fact as demonstrated here, *is* the most effective means of eliciting state protection, support and service. If the justice-seeking process itself produces the injustice, how can one seek to change the process itself, given that actors themselves are part of it, and without compromising the welfare of those whom one has undertaken to represent?

What I have come away with, at the end of this thesis, is the idea that acknowledging the existence of these relationships and dynamics (i.e. the inequality of 'connections', the state of 'uncertainty' and the problems of vulnerability) in the justice-seeking process is a starting point. It expands the possibility of action and allows a reflexive moment from which to begin anew, to choose to challenge the way things are done. Drawing on Adjukovic and Corkalo's description about communal polarisation in the former Yugoslavia and how interethnic friends and colleagues stopped talking about the atrocities that were happening in each community (2004:290-291), I would agree that it is this inability or an unwillingness to talk about what is going on which is one of the greatest dangers. I hope this thesis offers a point for initiating such a dialogue.

I would also like to propose some ideas for future research. Firstly, I would suggest a direct study of the ways in which actors and mediators operate in their justice-seeking role. I have for example not been able to systematically research the intricacies and motivations of state agents, especially the police. I would also suggest that a similar study of the particularities of the justice-seeking process in the formerly active conflict contexts in Sri Lanka, with their presence of the military and former militant groups and their histories of atrocity and distorted power relations, would also prove very useful. Such a study may reveal the more specific dynamics resulting from the greater power disparities. Another major area of work which I believe is under-studied and under-analysed is the successful work of activists and broader social movements, which help to bring in new practices that align with justice ideals and values. These would provide complementary accounts which would help to take forward the study of justice both in Sri Lanka and elsewhere.

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Appendices

Annex A: Legal Empowerment Survey - Guidelines/checklist for research members

INTRODUCTION & CONSENT (summary)

- This study is on how to effectively resolve or address problems or difficulties in the community or in the home, particularly disputes or conflicts, and what is needed in order to be able to do this well. The study is undertaken jointly by The Asia Foundation, who will use the study to help improve the services they give to (organisation x) and by Maleeka Salih, who will use the material for her doctoral studies at University (explain further till interviewee understands).
- I am _____
- This study will involve sharing with us
 - some examples of problems and difficulties that you were involved
 - your opinions and experiences with regard to this
 - and which services and institutions were helpful in resolving this
- We are not in a position to directly provide assistance to you regarding your problem.
- We will be recording the interviews, so that we don't miss anything important. Is that ok?
- The interview will take about 1-1.5 hours. If you are agreeable, we can set a time and come back at that time.
- All the personal information that is shared with us will be kept confidential. General information from the interviews will be used for reports, discussions and for publications, including the doctoral thesis.
- If you would like to know about the report later on, please contact (organisation x). They will know where to contact us. Also, if you would like to remove anything from our records after or during speaking to us, please let me know and I can do so.

Are you agreeable to speak with me? Please remember that you can stop at any point if you do not want to continue with the interview.

1 YES 2 NO (If you don't mind, please tell me why you do not want to be interviewed?)

Time and date to return for interview (if necessary)

A. BACKGROUND OF THE PARTICIPANT

- i. Please tell me a little bit about yourself. How old you are? Your work and family?
- ii. Please tell me a little bit about this community.

B. SUCCESSFUL INCIDENT / CASE

Give an example of a problem you faced which was successfully resolved and explain how it was managed.

1. What happened? In detail.
2. How did you decide on what to do in the above example?
3. Who was involved? (*roles and positions –not just names*)
4. How did they come to know of or get involved in the situation?

5. What was the final outcome?
6. What were the reasons it worked out well, in your opinion?
7. What was difficult or challenging in this situation? Why?
8. What do you think about the outcome of the case?
9. What do you think helped to achieve this outcome?
10. Is this a usual kind of case and outcome?

C. UNSUCCESSFUL INCIDENT / CASE (failure)

Give an example of a problem which you see as an unsuccessful incident and explain what happened and why in this instance.

11. What happened? In detail.
12. How did you decide on what to do in the above example?
13. Who was involved? (*roles and positions –not just names*)
14. How did they come to know of or get involved in the situation?
15. What was the final outcome?
16. What were the reasons it worked out well, in your opinion?
17. What was difficult or challenging in this situation? Why?
18. What do you think about the outcome of the case?
19. What do you think helped to achieve this outcome?
20. Is this a usual kind of case and outcome?

D. CONCEPT OF LEGAL EMPOWERMENT (for TAF)

21. Have you heard the term of empowerment? What does this mean to you?
22. There are different kinds of empowerment. Have you heard of the term legal empowerment (empowerment with regard to legal issues and the law)? What does this mean to you?
23. If someone were to be legally empowered, what would s/he be like? What can s/he do?
24. How does someone become legally empowered?
25. Is there anything else that you would like to add which was not discussed?
26. Is there anything you would like to change or remove from what you have said during the interview?

Thank the respondent for the time they have spent and for the information they have shared.

E. ABOUT THE INTERVIEW – to be completed after the interview

Please reflect on your experience and observations during the interview and describe briefly. Is there anything you want to note about or the interviewed person?

- a) the participant:
- b) the interview

Date of interview: _____

Geographical location: _____ (village level)

Interviewer name: _____

Place of Interview: _____ (home, other – pls specify)

Annex B: Full list of presenting problems and outcome by site.

Total	Type of Dispute	District	Total	% by type of dispute	Outcome		
					<i>Successful/ Satisfactorily resolved</i>	<i>Unsuccessful/ Not satisfactorily resolved</i>	<i>Undecided/ Still ongoing in some form</i>
36	Land disputes	Kandy	17	47	9	8	0
		Puttalam	4	11	3	1	0
		Galle	15	42	9	3	3
31	Alcoholism/ drug addiction	Kandy	14	45	7	7	0
		Puttalam	4	13	3	1	0
		Galle	13	42	2	11	0
29	Poverty and debt	Kandy	14	48	5	9	0
		Puttalam	4	14	0	3	1
		Galle	11	38	2	6	3
27	Violence & assault	Kandy	10	37	4	5	1
		Puttalam	6	22	2	2	2
		Galle	11	41	4	4	3
25	Marital/ family disputes	Kandy	5	20	1	3	1
		Puttalam	14	56	10	3	1
		Galle	6	24	0	4	2
25	Tsunami housing/relief	Kandy	0	0	0	0	0
		Puttalam	0	0	0	0	0
		Galle	25	100	11	10	4
21	Access to services	Kandy	9	43	4	5	0
		Puttalam	7	33	3	4	0
		Galle	5	24	2	3	0

					Outcome		
Total	Type of Dispute	District	Total	% by type of dispute	<i>Successful/ Satisfactorily resolved</i>	<i>Unsuccessful/ Not satisfactorily resolved</i>	<i>Undecided/ Still ongoing in some form</i>
18	Domestic violence	Kandy	8	44	3	5	0
		Puttalam	3	17	3	0	0
		Galle	8	44	3	4	0
14	Ethnic and religious violence	Kandy	7	50	3	2	2
		Puttalam	6	43	2	4	0
		Galle	1	7	1	0	0
11	Detention/arrest	Kandy	4	36	3	0	1
		Puttalam	1	9	0	1	0
		Galle	6	55	3	0	3
10	School/Pre-school	Kandy	5	6	4	0	1
		Puttalam	0	0	0	0	0
		Galle	5	6	1	4	0
10	Migration	Kandy	3	1	1	1	1
		Puttalam	3	1	0	1	2
		Galle	4	1	1	2	1
9	Theft	Kandy	4	1	0	2	2
		Puttalam	3	1	1	2	0
		Galle	2	1	1	1	0
8	Water disputes	Kandy	6	2	0	4	2
		Puttalam	0	0	0	0	0
		Galle	1	0	1	1	0

					Outcome		
Total	Type of Dispute	District	Total	% by type of dispute	<i>Successful/ Satisfactorily resolved</i>	<i>Unsuccessful/ Not satisfactorily resolved</i>	<i>Undecided/ Still ongoing in some form</i>
8	Sexual assault	Kandy	2	1	1	0	1
		Puttalam	2	1	1	0	1
		Galle	4	1	2	2	0
7	Exploitation/labour	Kandy	3	1	2	1	0
		Puttalam	2	1	0	2	0
		Galle	2	1	1	1	0
7	Harassment	Kandy	1	0	0	1	0
		Puttalam	2	1	2	0	0
		Galle	4	1	3	1	0
6	Canals/culvert/ garbage dump	Kandy	2	1	0	2	0
		Puttalam	1	0	1	0	0
		Galle	3	1	0	3	0
4	Neighbour disputes	Kandy	2	1	1	1	0
		Puttalam	1	0	0	1	0
		Galle	1	0	1	0	0
3	Abduction/ forced marriage	Kandy	0	0	0	0	0
		Puttalam	3	1	1	0	2
		Galle	0	0	0	0	0
3	Illness	Kandy	1	0	1	0	0
		Puttalam	1	0	0	1	0
		Galle	2	1	1	1	0

					Outcome		
Total	Type of Dispute	District	Total	% by type of dispute	<i>Successful/ Satisfactorily resolved</i>	<i>Unsuccessful/ Not satisfactorily resolved</i>	<i>Undecided/ Still ongoing in some form</i>
3	Political violence	Kandy	2	1	1	1	0
		Puttalam	0	0	0	0	0
		Galle	1	0	1	0	0
2	Cattle & crop disputes	Kandy	2	1	1	0	1
		Puttalam	0	0	0	0	0
		Galle	0	0	0	0	0
2	Gender inequity	Kandy	2	1	0	1	1
		Puttalam	0	0	0	0	0
		Galle	0	0	0	0	0
2	Disappearance	Kandy	1	0	0	1	0
		Puttalam	0	0	0	0	0
		Galle	0	0	0	0	0
3	Flooding	Kandy	0	0	0	0	0
		Puttalam	1	0	1	0	0
		Galle	2	1	1	1	0
1	Transfer	Galle	1	0	0	1	0
	Total		325	100	135	148	42
	%				42	46	13

	Total no of problems by site	Kandy	124	38	51	59	14
		Puttalam	68	21	33	26	9
		Galle	133	41	51	63	19
			%				
	Percentage of problems by site	Kandy	100	31	41	48	11
		Puttalam	100	31	49	38	13
		Galle	100	31	38	47	14

Annex C: Full list of type of mediator by site

			Kandy	Puttalam	Galle
	Total	%			
Local committees	133	23	17	69	47
Police	104	18	36	14	46
GN	51	9	35	2	14
Family members (advice, loans, etc)	48	8	22	13	13
Politicians, MPs, Ministers	39	7	16	8	15
Courts	34	6	18	3	13
NGOs	36	6	11	6	19
State Administrative Officials (Divisional Secretariat, Government Agent, Samurdhi official, Public Health Inspector)	18	3	12	2	4
No help	13	2	6	1	6
Thugs, Henchmen, Criminal elements	12	2	0	6	6
Estate leader	9	2	9	0	0
Local council, Pradeshya Sabha (local government) council	9	2	5	0	4
Village leader	7	1	7	0	0
Schoolteacher, Principal, Doctor	7	1	4	0	3
Land Reforms Commission	5	1	5	0	0
Charmers doing mantra work for Muslims	5	1	0	5	0
Camp officer	5	1	0	5	0
Mediation Board	5	1	3	0	2
Legal Aid Commission	4	1	0	3	1
Ulama Board	4	1	0	4	0

			Kandy	Puttalam	Galle
Real estate agents/ Property Development Board/ Company Businessman	4	1	0	0	4
Labour Commission/Water Board/Electricity Agricultural Office	4	1	3	1	0
Village-Police Committee	3	1	3	0	0
Human Rights Council/ Human Rights Organisations	3	1	1	2	0
Office Superiors	2	0	0	1	0
Bank	2	0	1	0	1
Kapurala (charms for the Sinhalese)	2	0	0	0	2
Estate Trust Fund	2	0	2	0	0
Justice of the Peace, notary, registrar	2	0	0	0	2
Hat Party	2	0	0	2	0
Total	574	100	216	147	202